

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

VANDERBILT MORTGAGE)	CASE NO: CA-C-09-312
AND FINANCE, INC., ET AL.,)	
)	CIVIL
Plaintiffs,)	
)	Corpus Christi, Texas
vs.)	
)	Thursday, November 11, 2010
)	
CESAR FLORES, ET AL.,)	(8:21 a.m. to 12:16 p.m.)
)	(1:06 p.m. to 5:16 p.m.)
<u>Defendants.</u>)	

JURY TRIAL - DAY 2

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
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Courtroom Clerk:	Sondra Scotch
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
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Corpus Christi, TX; Thursday, November 11, 2010; 8:21 a.m.

(Call to Order)

(Outside the presence of the jury)

THE CLERK: All rise.

THE COURT: Thank you. You may be seated.

How did you-all do on working with the charge?

MR. J. GUTIERREZ: Your Honor, we visited last night and we made a lot of progress but we need a little bit more time.

THE COURT: I mean I understand you don't have to agree that RICO is going to the jury and that sort of thing, but you made progress?

MR. J. GUTIERREZ: Yes, we did.

THE COURT: That's good.

MR. SOLTERO: We did, and where we left was, if it's okay with the Court, is that we're going to continue to work over the weekend, look at some of the authorities and see if we can narrow down some of the disputes. We're hoping to be able to report back early, like Monday, if that's okay with the Court.

And I don't know if the Court has kind of an informal charge conference where we can discuss things or whether --

THE COURT: Sunday afternoon.

MR. SOLTERO: Okay, fine.

THE COURT: No.

1 **MR. SOLTERO:** Or, you know, if that's the way your
2 Honor does it, then we're willing to do that.

3 **THE COURT:** I like just to do it, you know, I don't
4 like to stop and take a half a day for a charge conference.
5 You know, we'll just pick a time in the evening and do it.

6 **MR. SOLTERO:** And I think, Judge, we can probably do
7 it in about 20 or 30 minutes. I think we can still do --

8 **THE COURT:** That's even better.

9 **MR. SOLTERO:** -- do something that's pretty concrete
10 and you just need to make decisions.

11 **THE COURT:** And just flip a coin with the rest.

12 **MR. SOLTERO:** Right. And then we'll obviously have
13 to make our kind of formal objections and tender everything.

14 **THE COURT:** Okay.

15 **THE CLERK:** The Court calls Civil Action C-09-312;
16 *Vanderbilt Mortgage and Finance, Inc., et al. versus Cesar*
17 *Flores, et al.*

18 May I have appearances, please?

19 **MR. B. GUTIERREZ:** Baldemar Gutierrez for Mr. Flores
20 and Mr. King, and we are present and ready to proceed, your
21 Honor.

22 **MR. RUMLEY:** Your Honor, David Rumley on behalf of
23 the Trevinos.

24 **MR. RANGEL:** Jorge Rangel and Pat Lochridge and
25 others for Vanderbilt, CHI and CMH Homes.

1 **THE COURT:** Wonderful.

2 **MR. LOCHRIDGE:** Thank you, your Honor.

3 **MR. RANGEL:** And we are ready to proceed, your Honor.

4 **THE COURT:** So you're almost done, a couple more
5 witnesses?

6 **MR. RANGEL:** I think we'll have a full day today.

7 **THE COURT:** Really? Okay.

8 So the lady is back there; she's ready to go back. I
9 guess we'll give the jury a bet. They're not all here, are
10 they?

11 **(No audible response)**

12 **(Pause)**

13 **THE COURT:** We have eight? We're missing eight?
14 Well, I'm not good with that.

15 **THE CLERK:** Number eight.

16 **THE COURT:** Oh, number eight. He's only been
17 partially with us anyway.

18 **(Pause)**

19 **THE COURT:** Do you want to have the jury clerk start
20 calling him?

21 **(No audible response)**

22 **THE COURT:** He's here? Really? Okay.
23 Do you-all want to get started early?

24 **MR. RUMLEY:** Yes, your Honor.

25 **THE COURT:** Okay, bring them in.

1 Ma'am, would you mind taking the stand again, please?

2 **MR. SOLTERO:** Your Honor, Mr. Rumley stepped out for
3 a second. He'll be back temporarily --

4 **THE COURT:** Oh.

5 **MR. SOLTERO:** Should I bring her in now or wait for
6 him.

7 **THE COURT:** Go ahead, and let him -- put the lady up
8 here. That wasn't his witness anyway.

9 **(Kim Russell takes the witness stand; pause)**

10 **THE COURT:** Where is the mobile home, by the way?

11 **MR. RANGEL:** Same location, your Honor.

12 **THE COURT:** Okay.

13 **THE CLERK:** All rise for the jury.

14 **(The jury enters the courtroom at 8:27 a.m.)**

15 **THE COURT:** Thank you. You may be seated.

16 I also want to thank you-all for working on Veteran's
17 Day. The lawyers wanted to move forward with the case as
18 efficiently as possible, and I hope we can honor our veterans
19 with just hard work today. So, thank you.

20 You may proceed.

21 **MR. THAGARD:** Good morning, Ms. Russell.

22 **THE WITNESS:** Good morning.

23 //

24 //

25 //

Russell - Direct / By Mr. Thagard

10

1 **DIRECT EXAMINATION RESUMED**

2 **BY MR. THAGARD:**

3 Q Yesterday I asked you if you had ever testified before and
4 you told me you hadn't, so you -- that answer is no longer
5 true, is it?

6 A No, sir, it's not true.

7 Q Are you still nervous?

8 A Yes, sir, a little.

9 Q I want to make sure that the record is clear on a few
10 things from yesterday.

11 **THE COURT:** Don't repeat yesterday. Just go forward,
12 please.

13 **MR. THAGARD:** I will.

14 **BY MR. THAGARD:**

15 Q There's -- We -- Yesterday you testified that there was a
16 time in which Mr. King called you and --

17 **THE COURT:** One more time. Don't repeat what you
18 said yesterday.

19 **MR. THAGARD:** I'll --

20 **THE COURT:** Just go forward.

21 **MR. THAGARD:** Yes, ma'am.

22 **BY MR. THAGARD:**

23 Q There was a time yesterday in which you tes -- you called
24 Mr. King and told him that if he paid you --

25 **MR. RUMLEY:** Objection, your Honor, asked and

1 answered, cumulative.

2 **THE COURT:** Sustained.

3 **BY MR. THAGARD:**

4 Q There is a -- One of the activities you engage in as an
5 account representative is skip tracing --

6 **MR. RUMLEY:** Objection, leading.

7 **THE COURT:** Sustained.

8 **BY MR. THAGARD:**

9 Q There were times in the account records in which you did
10 things other than call people, correct?

11 **MR. RUMLEY:** Objection, leading.

12 **THE COURT:** Sustained.

13 **BY MR. THAGARD:**

14 Q What is skip tracing?

15 A If a customer's number is disconnected or not in service
16 or we've lost contact with a customer, we use White Pages
17 through the Internet or any free sites to find alternate
18 numbers for the customer, such as maybe a neighbor or a
19 possible relative, to leave a message for the customer.

20 Q And when do you engage in skip tracing?

21 A When we've lost all contact with a customer. For
22 instance, occasionally numbers will be disconnected or their
23 home number will be disconnected and so we will use that to
24 leave a message for them to return our call.

25 Q And what sources do you use to try to find the

1 information?

2 A There are free sites on the Internet, White Pages, Google
3 sites that you can go to, the phone book, you know, just to
4 locate a possible neighbor on the street that they live on or
5 even a possible relative.

6 Q And these calls to try to find a neighbor or a relative,
7 what's the purpose of that skip tracing?

8 A To leave a general message with that neighbor or relative.
9 If they agree that they know the customer, basically we just
10 say that we're with Vanderbilt and give an 800-number and ask
11 if they would mind leaving the message with the person, the
12 customer.

13 Q And do you take steps to protect the privacy of your
14 customers?

15 A Yes, sir.

16 Q And how do you -- What steps do you take to protect the
17 privacy of the customer?

18 A We only leave who we are, our name, and I always leave my
19 first and last name and that I'm with Vanderbilt and a toll-
20 free 800 number. We don't identify ourselves as a mortgage
21 company or that we're collecting a debt or anything of that
22 nature. We don't release any information about the customer at
23 all.

24 Q And are there times when you call a place of employment?

25 A Yes, sir.

1 Q And do you take the same steps there?

2 A Yes, sir.

3 Q And what do you do if trying to contact neighbors and
4 relatives doesn't work?

5 A The next step if we've exhausted all our efforts to get
6 them by telephone is we will send a field representative, who
7 is a person that will go to the home actually and try to put
8 the customer on the phone with us if there are no other numbers
9 to reach them at.

10 Q And what do you call this step?

11 A Field chase.

12 Q And what steps do you take during a field chase to protect
13 the privacy of a customer?

14 A If the customer is there, the field rep is to put the
15 customer on the phone with a representative at Vanderbilt.
16 They will usually have someone on the line as they are
17 approaching the home if there is a car there, if they think
18 someone is at home, so that it prevents the customer from
19 having to wait to get someone on the line. If the customer is
20 not at home, there is a blank envelope that doesn't have any
21 identifying marks on it. There is a letter left in that
22 envelope that's got the date on it and who the letter is to and
23 basically to contact Vanderbilt with the 800-number.

24 Q Are you personally familiar with the field chasing
25 technique?

1 A Yes, I am. As a team leader, one of my job expectations
2 is once a year I am to on an actual field rep ride-along to
3 where I shadow a field representative and see what they do day
4 to day.

5 Q And was there a time after Mr. King had left the home and
6 which you determined you needed to place an accounting default
7 proceedings?

8 A Yes, sir.

9 **MR. THAGARD:** And can we please pull up Plaintiffs'
10 146?

11 **(The exhibit is displayed)**

12 **BY MR. THAGARD:**

13 Q Can you identify this letter for us please, ma'am?

14 A Yes, sir. This is a notice of default and right to cure
15 default letter.

16 Q And who is it sent to?

17 A Mr. Cesar Flores.

18 Q And what was the date?

19 A May the 5th of 2009.

20 Q And how was it mailed?

21 A It is sent certified mail, sir.

22 Q And tell us about the procedures the company uses to --
23 its routine procedures for sending a letter like this.

24 A If it comes to the point that we need to send a notice,
25 the account rep is -- they order the notice if we've exhausted

1 all efforts to find our customer, find out what their
2 intentions are. The account representative, they order the
3 letter through the computer. There is a senior account
4 representative, which is their supervisor, and they review the
5 letter, make sure everything is correct, and if they're in
6 agreement that it is time for that letter to go out, they
7 approve it. It's been generated to a mail room at our office
8 where it's printed out and it's sent out certified from there.

9 Q Does that happen every time they need to generate a
10 request for a letter like this?

11 A Yes, sir.

12 Q And that's Vanderbilt's ordinary mailing procedures?

13 A Yes, sir.

14 Q And generating and mailing these notices is part of
15 Vanderbilt's regular operations?

16 A Yes, sir.

17 Q And in this event, was this notice of default based upon
18 your review of the file and generated in the ordinary course of
19 Vanderbilt's business?

20 A Yes, sir.

21 Q Now, a couple things that the letter is supposed to say.
22 You showed us where it was sent registered mail, correct?

23 A Yes, sir.

24 Q And there are a couple of things that you're seeking that
25 the letter says. Right there under number one, will you

1 highlight that for us, number one? And blow up that too a
2 little bit. And tell us what the letter is seeking to have --
3 I guess what you're seeking to have paid there.

4 A To make the monthly payment beginning with the March 1st,
5 2009, payment in the total amount of \$1,752.50.

6 Q Because they're over 60 days late at this point, right?

7 A Yes, sir.

8 Q How many payments is this seeking?

9 A It would be looking to receive three payments, March,
10 April and May's payments.

11 Q Okay. And those were the -- The only thing you're seeking
12 there is the amounts that were due?

13 A Yes, sir, yes, sir.

14 Q And you see at the bottom there are some late charges.
15 What are those?

16 A Any accrued late fees we charge. After the 15th of the
17 month there's a five dollar late fee applied to the loan. So
18 the \$150 would have been any late fee that was accrued during
19 the time they had the loan.

20 Q And are you seeking to ask for any other payments in this
21 letter?

22 A No, sir.

23 Q The letter also -- If you'd clear that -- does it state
24 the nature of the default? I mean, does it say what they've
25 done to get themselves in default?

1 A Yes, sir.

2 Q And is there a place in which the letter indicates what
3 they need to do to cure the default?

4 A Yes, sir, to take the amount owed and to send it to
5 Vanderbilt Mortgage and Finance, Incorporated, and it gives the
6 address to send that to.

7 Q And if they do that within 30 days of receipt of the
8 letter, then they will have cured the default?

9 A Yes, sir.

10 Q Does Vanderbilt really want to default in this form?

11 A No, sir.

12 Q All right. Is there -- So that's the action to cure. Is
13 there a place in the letter in which Vanderbilt tells the
14 customer what they're going to do if the default is not cured?

15 A Yes, sir. I think midway through, right there where it's
16 highlighted, it tells what will happen if the notice is not
17 cured.

18 Q And is there a place in the letter in which the customer's
19 right to redeem is explained?

20 A Yes, sir, there is. It's, I think, right below the area
21 of what would happen if they don't cure the default.

22 Q That's hard to read. Can you read that?

23 A 'You have the right' -- Yes, sir.

24 'You have the right to redeem the manufactured home
25 before we resell it if you pay us the full amount due under the

1 contract.'

2 Q And as far as your note, is this Vanderbilt's standard
3 letter, notice of default letter?

4 A Yes, sir.

5 **MR. THAGARD:** And can you pull up Plaintiffs' 36,
6 please?

7 **(The exhibit is displayed)**

8 **BY MR. THAGARD:**

9 Q Can you tell us what this document is, please?

10 A This is a United States Postal Service track and confirm
11 notification.

12 Q What does it -- Where can you get this?

13 A You can go under USPS dot com, the United States Postal
14 Service's website.

15 Q And what information does it provide?

16 A If we are wanting to track a letter or find out where one
17 is in route, we can go in, put the certified number in that
18 belongs to that letter and it will let us know what process
19 that letter is in.

20 Q How can you tell -- Do you compare the certified numbers
21 on top?

22 A Yes, sir.

23 Q So this one ends in 0243.

24 **MR. THAGARD:** Can you go back to 146, please?

25 **(The exhibit is displayed)**

1 **BY MR. THAGARD:**

2 Q Is that the same number that you find on the top of the
3 letter?

4 A Yes, sir.

5 Q And right there under the certified mail number?

6 A Yes, sir.

7 **MR. THAGARD:** Can you go back to 36, please?

8 **(The exhibit is displayed)**

9 **BY MR. THAGARD:**

10 Q Looking at this, what does this USPS tell us about what
11 happened after that registered letter was mailed?

12 A A notice was left at the address on May the 8th at 11:04
13 a.m., and that's Alice, Texas. Then a notice was left again on
14 May the 18th at 3:06 p.m. in Alice, Texas. And then it was
15 noted 'unclaimed' on June the 6th at 2:44 p.m. in Alice, Texas.
16 And then returned back to Vanderbilt on June 15th at 8:18 a.m.
17 in Maryville, Tennessee.

18 Q So what does the 'unclaimed' mean?

19 A It wasn't picked up or -- When certified letters are
20 mailed, a green card is left if the person is not home, letting
21 them know to come to the post office to get their mail. The
22 'unclaimed' means that it wasn't retrieved.

23 Q And this was mailed to the 1700 address?

24 A Yes, sir.

25 **MR. THAGARD:** I'd like to pull up Plaintiffs' 145,

1 please.

2 (The exhibit is displayed)

3 BY MR. THAGARD:

4 Q Can you tell us what this letter is?

5 A This is a notice of default and right to cure default to
6 Mr. Alvin E. King.

7 Q Did you have the obligation to send a notice to Mr. King?

8 A No, sir.

9 Q Why?

10 A He had called in and advised us that he had left the home
11 and that he wasn't going to make any other payments after that
12 last one.

13 Q Is it your policy to try to send them anyway?

14 A Yes, sir.

15 Q And did you-all undertake efforts to try to find the best
16 address you could for Mr. King?

17 A We do. We have an Accurant system that will pull up a
18 last verifiable address for a customer. Our goal is to find
19 that customer to let them know what's going on because they may
20 have -- if they know it's going to repossess they may have some
21 interest in trying to save it at that point. So we want to
22 talk to them before we send it.

23 Q And so who was this letter sent to?

24 A Mr. Alvin E. King.

25 Q And the date?

1 A May the 5th, 2009.

2 Q And are the contents of this letter the same as the
3 previous notice to Mr. Flores?

4 A Yes, sir.

5 **MR. THAGARD:** Would you please pull up Plaintiffs' --

6 **BY MR. THAGARD:**

7 Q Let me ask you this: Was this notice mailed according to
8 the same business procedures as Mr. Flores'?

9 A Yes, sir, certified.

10 Q Okay.

11 **MR. THAGARD:** Please pull up Plaintiffs' 39.

12 **(The exhibit is displayed)**

13 **BY MR. THAGARD:**

14 Q Tell us what this document is, please.

15 A This is another USPS dot com. It's a track and confirm
16 for that certified letter that was sent to Mr. King.

17 Q Okay. And the number ends in 236, correct?

18 A Yes, sir.

19 Q Okay.

20 **MR. THAGARD:** Can we go back to 145, please?

21 **(The exhibit is displayed)**

22 **BY MR. THAGARD:**

23 Q Is that the same certified number?

24 A Yes, sir.

25 //

1 **MR. THAGARD:** Let's go back to 39, please.

2 **(The exhibit is displayed)**

3 **BY MR. THAGARD:**

4 Q Can you tell us from this document the history of what
5 happened to that certified mail letter after you mailed it?

6 A Yes, sir. A notice was left on May the 8th at 7:51 a.m.
7 in Alice, Texas. Then a notice was left on May the 20th at
8 8:18 in Refugio, Texas, that it was delivered on May the 21st
9 at 7:54 a.m. in Refugio, Texas.

10 Q So was this letter forwarded from Alice to Refugio?

11 A The -- Yes, the history of it shows that it was forwarded
12 -- a forwarding address.

13 Q And somebody -- It was actually delivered and accepted in
14 Refugio?

15 A Yes, sir, according to the track and confirm.

16 Q And this was the letter to Mr. King?

17 A Yes, sir.

18 **MR. THAGARD:** Can you please pull up 147, Plaintiffs'
19 147?

20 **(The exhibit is displayed)**

21 **BY MR. THAGARD:**

22 Q And what is this letter?

23 A This is a notice of intent to accelerate your debt.

24 Q And who is this sent to?

25 A Mr. Cesar Flores.

1 Q Okay. And the last four letters of the certified number?

2 A Zero six four one.

3 Q And what was the date it was mailed?

4 A June the 16th of 2009.

5 Q So that's more than 30 days after the first letter,
6 correct?

7 A Yes, sir.

8 Q I want to stop here for a second. Are you familiar with
9 the efforts that Vanderbilt took to try to get in touch with
10 Mr. Flores and Mr. King between the time it mailed the notice
11 of default on May 5th and between the time -- and this June
12 16th date?

13 A Yes, sir.

14 Q What steps did Vanderbilt take to try to get in touch with
15 Mr. Flores and Mr. King?

16 A Just because we send a letter, we don't stop trying to
17 contact our customer. We call any numbers that they have
18 provided to us, any neighbor numbers that have agreed to take a
19 message, or relatives. We also, if necessary, we will spend
20 the money to send another field chase to the home to see if we
21 can reach them there as well.

22 Q How frequently are you calling during this time?

23 A We're probably calling on a pretty regular basis,
24 especially if we're not getting an answer, getting a message, a
25 machine or, you know, no answer. We just want to do anything

1 possible to reach them at this point in time because we're
2 running out of time.

3 Q And what's the purpose for your calls?

4 A We want to help them save their home. If they can't
5 afford the home, we want to talk with them. Maybe we can help
6 them sell their home to avoid having it repossessed and have
7 that on them, so we try everything possible to get in touch
8 with them.

9 Q If they call you back and offer to make a payment, what
10 happens?

11 A We will accept that payment, and in some instances we will
12 agree to either do the homeowner's assistance program or extend
13 their payments if they show that they have, you know, the
14 ability to pay, they want to keep it. We want to do anything
15 possible to bring them current.

16 Q So going back to this letter.

17 **MR. THAGARD:** Let's look at Plaintiffs' 35, please.

18 **BY MR. THAGARD:**

19 Q Before we do this, so we don't have to go back. What's
20 the last number on that certified number?

21 A Zero six four one.

22 **MR. THAGARD:** Let's go to Plaintiffs' 35, please.

23 **(The exhibit is displayed)**

24 //

25 //

1 **BY MR. THAGARD:**

2 Q Can you identify this document for us?

3 A This is a track and confirm from the postal service
4 matching that letter.

5 Q Is that 0641, the same number?

6 A Yes, sir.

7 Q Okay. And tell me what the history of this registered
8 letter was. This is the one to Mr. Flores, right?

9 A Yes, sir.

10 Q Tell me what -- And it was mailed to the 1700 address?

11 A Yes, sir.

12 Q Tell me what happened to this letter.

13 A Yes, sir. The notice was left on June 22nd of 2009 at
14 11:33 a.m. in Alice, Texas. There was a second notice left on
15 July the 3rd, 2009, at 2:27 p.m. in Alice, Texas. It was noted
16 'unclaimed' on July the 9th, 2009, at 3:10, Alice, Texas. And
17 then it was delivered back to Vanderbilt on July 17th at 8:16
18 a.m.

19 Q So two notices were left for Mr. Flores?

20 A Yes, sir.

21 Q And did he accept the letter?

22 A According to the history, it was unclaimed.

23 **MR. THAGARD:** Let's go to Plaintiffs' 148, please.

24 **(The exhibit is displayed)**

25 //

1 **BY MR. THAGARD:**

2 Q And tell us what this letter is, please.

3 A This is also a notice of intent to accelerate your debt,
4 and it's addressed to Mr. Alvin E. King.

5 Q And what's the date on it?

6 A June the 16th of 2009.

7 Q What are the last four letters of the certified mail
8 receipt?

9 A Zero six three four.

10 Q Was this letter mailed in accordance with Vanderbilt's
11 standard mailing procedures?

12 A Yes, sir.

13 Q Okay.

14 **MR. THAGARD:** Will you pull up Plaintiffs' 38,
15 please?

16 **(The exhibit is displayed)**

17 **BY MR. THAGARD:**

18 Q Does that certified number match up?

19 A Yes, sir: 0634.

20 Q Okay. And what's the history of this letter?

21 A There was a notice left on June 22nd, 2009, at 7:18 a.m.
22 in Alice. Notice left on June the 30th at 8:35 a.m. in
23 Refugio. And then it was delivered on June the 30th at 4:29
24 p.m. in Refugio.

25 Q So it appears that the letter was forwarded to Refugio?

1 A Yes, sir.

2 Q It appears that somebody in Refugio accepted it?

3 A Yes, sir, the same day notice was left.

4 MR. THAGARD: I'd like to pull up Plaintiffs' 150,
5 please.

6 (The exhibit is displayed)

7 BY MR. THAGARD:

8 Q Tell us what this document is, please.

9 A This is a notice of acceleration addressed to Mr. Cesar
10 Flores.

11 Q And what's the last four digits of the certified number?

12 A Six nine one three.

13 Q And what's the date?

14 A June the 29th of 2009.

15 Q And what's the certified mail number?

16 A Six nine one three are the last four digits.

17 Q And was this letter mailed in accordance with Vanderbilt's
18 standard mailing procedures?

19 A Yes, sir.

20 MR. THAGARD: I'd like to pull up Plaintiffs' 34,
21 please.

22 (The exhibit is displayed)

23 BY MR. THAGARD:

24 Q Tell us what this is.

25 A This is a postal track and confirm matching that notice,

1 the 6913.

2 Q Can you tell us what the history of this letter was,
3 please?

4 A There was a notice left on July 3rd at 12:22 in Alice.
5 Another notice left on July the 18th at 12:19 in Alice. And
6 then it was unclaimed on July 25th, 2009, at 1:04 in Alice.

7 Q This was mailed to the 1700 address?

8 A Yes, sir.

9 Q Which is where the home was, correct?

10 A Yes, sir.

11 Q Okay. And despite the fact that two notices were left,
12 this certified letter was never claimed, was it?

13 A No, sir.

14 MR. THAGARD: I'd like to pull up Plaintiffs' 149,
15 please.

16 (The exhibit is displayed)

17 BY MR. THAGARD:

18 Q Tell us what this is, please.

19 A This is also a notice of acceleration addressed to
20 Mr. Alvin E King. The certified number is 6906, and it was
21 mailed on June 29th, 2009, as well.

22 Q And the last four digits are 6906?

23 A Yes, sir.

24 Q And was this notice mailed in accordance with Vanderbilt's
25 standard mailing procedures?

1 A Yes, sir.

2 MR. THAGARD: Would you please pull up Plaintiffs'
3 37?

4 (The exhibit is displayed)

5 BY MR. THAGARD:

6 Q Is the certified number the same?

7 A Yes, sir, 6906.

8 Q Can you tell us the history of this letter?

9 A Yes, sir. This notice was left on July 3rd at 12:22 in
10 Alice. A second time on July 15th at 4:06 in Alice. Then it
11 was sent 'unclaimed' on July 21st at 3:21 in Alice.

12 Q So it doesn't appear that this letter was forwarded?

13 A No, sir, it does not. It was delivered back to our
14 offices on August the 1st.

15 Q During the time that you're sending all these letters, is
16 Vanderbilt still trying to contact Mr. Flores or Mr. King?

17 A We still do everything possible to contact our customer
18 during the time the letter is out, the dates on the letter. We
19 make sure if we even need to give extra time, we're calling,
20 any way possible. If we have to send another field chase out
21 there, we will do that as well.

22 Q What you're trying to do is get them to call you back?

23 A Yes, yes, sir.

24 Q After this last letter that we just saw, this notice of
25 acceleration, does Vanderbilt still want to -- does Vanderbilt

1 want to avoid repossession?

2 A Yes, sir.

3 Q Is there an opportunity to send them another letter?

4 A We send a help letter out. Perhaps maybe that will grab
5 some attention to the customer, to have them call back in.
6 Maybe we can still help them even though they've got that last
7 letter, we can help them with the HAT program or the extension
8 or a payment plan if they want to do that.

9 **MR. THAGARD:** Can you please pull up Plaintiffs' 152?

10 **(The exhibit is displayed)**

11 **BY MR. THAGARD:**

12 Q Is this a copy of the 'Let us help you' letter?

13 A Yes, sir.

14 Q It says: 'Let us help you keep your home'?

15 A Yes, sir.

16 Q And it's sent to Mr. Flores, correct?

17 A Yes, sir.

18 Q At the address at the home, correct?

19 A Yes, sir.

20 Q And could you read that highlighted section, please?

21 **MR. RUMLEY:** Your Honor, I'm going to object. The
22 document speaks for itself and her just reading a document is
23 not testimony.

24 **THE COURT:** Sustained.

25 **MR. THAGARD:** I'll withdraw it, your Honor.

1 **BY MR. THAGARD:**

2 Q Tell us what the letter is -- what the substance of the
3 letter is and what you're trying to accomplish.

4 **MR. RUMLEY:** Objection, your Honor, speculation. She
5 didn't draft the letter.

6 **THE COURT:** Sustained.

7 **BY MR. THAGARD:**

8 Q Is this a standard letter that's sent in the ordinary
9 course of your --

10 **MR. RUMLEY:** Objection; same objection.

11 **THE COURT:** Go ahead.

12 **BY MR. THAGARD:**

13 Q Is this a standard letter sent in the ordinary course of
14 your employment with Vanderbilt?

15 A Yes, sir.

16 Q Are you familiar with the substance of the letter?

17 A Yes, sir.

18 Q Can you tell us what the substance of the letter and the
19 intent of Vanderbilt is?

20 A We understand that customers have difficult times, things
21 come up, they get behind, and the letter is -- the sole purpose
22 of the letter is to let them know, just call us and we will
23 talk with them and figure out -- try to find some sort of
24 option to help them keep that house.

25 Q Okay. Have you had an opportunity to review the payment

1 history we discussed yesterday?

2 A Yes, sir.

3 Q Okay.

4 **MR. THAGARD:** And can you please pull up Plaintiffs'
5 18?

6 **(The exhibit is displayed)**

7 **BY MR. THAGARD:**

8 Q From your review of the Vanderbilt files and records, what
9 is the amount of money that is currently owed by Mr. Flores and
10 Mr. King pursuant to the retail installment contract they
11 signed?

12 A Twenty eight thousand seven hundred and ninety-three
13 dollars and 87 cents.

14 Q Ms. Russell --

15 **MR. THAGARD:** We can take that down.

16 **(The exhibit is removed)**

17 **BY MR. THAGARD:**

18 Q Ms. Russell, one of the matters that's been raised in this
19 case is whether or not Vanderbilt harassed Mr. Flores and
20 Mr. King. Have you had an opportunity to review the file?

21 A Yes, sir.

22 Q And are you aware of any evidence of Mr. Flores or
23 Mr. King complaining about the way they were treated by any
24 Vanderbilt account representative?

25 A There was one instance where Mr. King voiced that he was

1 not happy with the way one of the reps spoke with him on the
2 telephone. I think it was Mr. Flores that the rep spoke with.

3 Q And was that complaint directed directly to you?

4 A Mr. King called in asking for me, or I may have called him
5 that day, I can't recall, and he did let me know what had
6 happened.

7 Q And do you remember approximately when that was?

8 A I'm sorry, I do not remember the exact date.

9 Q And -- But you've reviewed the loan file, correct?

10 A Yes, sir.

11 Q And did you find any other evidence of Mr. Flores and
12 Mr. King complaining about the way they were treated?

13 A No, sir.

14 Q And how long a period was that?

15 A Seven years.

16 Q When you make records at Vanderbilt about calls, are you
17 expected to put in all the complaints?

18 A Yes, sir.

19 Q So if a customer complains, it should be put in there?

20 A Yes, sir.

21 Q So if somebody had made a complaint, you would expect to
22 find it in the file?

23 A Yes, sir.

24 Q Were you ever mean or rude to Mr. Flores or Mr. King?

25 A No, sir.

1 Q Did you ever harass them?

2 A No, sir.

3 Q Did you ever threaten them?

4 A No, sir.

5 Q Another thing that has been raised in this case is a claim
6 that Vanderbilt called Mr. King at work after he asked them not
7 to. Have you had an opportunity to investigate that claim?

8 A Yes, sir, through the notes.

9 Q And what did you find?

10 A I could not find any instance where he asked us not to
11 call his place of employment. He did ask me on a few occasions
12 to call him there because that was the best way to reach him.

13 Q And did he ask you that personally?

14 A Yes, sir.

15 Q On how many occasions?

16 A There were several occasions. I can't remember exactly
17 how many, but there were various times when he needed
18 information or maybe his cell phone wasn't working that I did
19 call him at work.

20 Q And that was pursuant to a specific request?

21 A Yes, sir.

22 Q And there were no instances in which he asked you -- you
23 could find that he asked you not to call him at work?

24 A No, sir.

25 Q Have you had the opportunity -- You've had an opportunity

1 to review the call notes though?

2 A Yes, sir.

3 Q And did you see any evidence that any Vanderbilt account
4 representative had violated any policy or procedure of
5 Vanderbilt?

6 A No, sir.

7 Q In hindsight, did you see anything that you or anyone else
8 at Vanderbilt would have done differently?

9 A No, sir.

10 Q Did you see any evidence that anyone at Vanderbilt ever
11 abused or harassed Mr. Flores or Mr. King?

12 A No, sir.

13 Q Have you had an opportunity to review the things that
14 Mr. King said about you in testimony?

15 A I've only read the depositions that were provided to me.

16 Q What was your reaction to them?

17 A I was a little upset because I felt like we did have a
18 good relationship and that he felt comfortable sharing specific
19 personal information with me about their business, about
20 getting a job at the funeral home, about his rabbits. I mean
21 he was very proud of those rabbits that they raised. I helped
22 them through -- I felt like I helped them through a lot of
23 their difficult times with not being able to make their payment
24 and to, you know, make an alternate arrangement with them. I
25 wanted every way possible to make sure that they made those

1 payments, kept that house. They loved it. They always
2 commented to me, and Mr. King specifically, about how much he
3 loved his house. And they were devastated when the truck
4 veered off the road and hit their home.

5 Q Just a couple of other things. In your review of the call
6 notes, did you ever find a record in which Mr. Flores or
7 Mr. King asked Vanderbilt to send them a copy of their deed of
8 trust?

9 A I reviewed one instance where they wanted a copy of their
10 retail installment contract and also a copy of the deed of
11 trust is what they specifically asked for.

12 Q And do you recall when that was?

13 A May. I don't recall the year, but around May, the latter
14 part of May I think is the date I recall.

15 Q And was there another call in which Mr. King called you
16 and said he had gotten some information from another mobile
17 home seller that he would have to sell his land?

18 A He called in wanting to -- I think they wanted to buy a
19 bigger home. Their fear was that they were told from a -- I
20 think a mobile home center manager that -- or given some
21 incorrect information -- that if they sold the house that they
22 were currently living in, they would have to sell the land also
23 that was with that home. We advised at that point that if that
24 loan was paid in full that we would release our lien on that
25 property, and then that land was -- they could do with what

1 they wanted to. That's not how that works if you want to
2 purchase another home.

3 Q And this was the lot 36 that had been pledged on the loan?

4 A I think --

5 Q Or where the house was situated?

6 A Yes, sir.

7 Q And the point was, was that if they had made all 144
8 payments, the land would be released?

9 A Yes, sir.

10 **MR. THAGARD:** Your Honor, I pass the witness.

11 **THE COURT:** Thank you. Mr. Rumley?

12 **MR. RUMLEY:** Yes, your Honor.

13 **(Pause)**

14 **MR. RUMLEY:** Good morning.

15 **THE WITNESS:** Good morning.

16 **CROSS EXAMINATION**

17 **BY MR. RUMLEY:**

18 Q You and I have never met before, correct?

19 A No, sir.

20 Q You were asked a number of questions about whether or not
21 you're nervous and that sort of thing. You had looked at all
22 these documents before you came in here today, right?

23 A Yes, sir.

24 Q You were well prepared to come in here and tell your
25 story?

1 A Yes, sir.

2 Q In fact, all these gentlemen over here, you've got the
3 president of Vanderbilt right here, right?

4 A Yes, sir.

5 Q He's your, like, big boss?

6 A Yes, sir.

7 Q And you wanted to come in here and you wanted to do well
8 for the company, right?

9 A I wanted to come in here and tell what I knew of the
10 events of the account, yes, sir.

11 Q And you wanted to do well at that, right?

12 A I wanted to tell what I knew and what my knowledge was of
13 the loan.

14 Q Well, let's talk about your knowledge. I think yesterday
15 you told me and this jury that you would actually record these
16 calls. These calls that you have been telling them about, that
17 you actually record these calls?

18 A Sir, I don't know if every call is recorded. I do know
19 that we do record calls and we use those for training purposes.

20 **MR. RUMLEY:** Objection, non-responsive.

21 **THE COURT:** Sustained.

22 **BY MR. RUMLEY:**

23 Q Ma'am, do you record the calls that you have with the
24 customers, yes or no?

25 A Yes, we do record calls.

1 Q Okay. Who is Mr. Nichols?

2 A He is the president of Vanderbilt Mortgage.

3 Q And that's who you work for, right?

4 A Yes, sir.

5 Q Is he a truthful and honest person in your opinion?

6 A Yes, sir.

7 Q You said you read the depositions of Mr. Flores and
8 Mr. King, right?

9 A Yes, sir.

10 Q Did you read any other depositions?

11 A Ms. Trevino and Mr. Trevino.

12 Q How about Mr. Nichols? Did you read the president of
13 Vanderbilt's deposition?

14 A No, sir.

15 Q Why would he testify under oath that you never record any
16 of these calls?

17 **MR. RANGEL:** Objection, your Honor, he cannot be
18 asking questions about some other testimony.

19 **THE COURT:** I'm sorry, this is not your witness.

20 **MR. RANGEL:** I apologize.

21 **THE COURT:** You may be seated; thank you.

22 **MR. RANGEL:** I apologize.

23 **MR. THAGARD:** Your Honor, I object to him --

24 **THE COURT:** Overruled.

25 //

1 **BY MR. RUMLEY:**

2 Q Ma'am?

3 A Yes, sir.

4 Q Why would Mr. Nichols testify that you don't record any of
5 these calls with the customers?

6 A I don't know why he would say that, sir.

7 Q Is that true or not true?

8 A I did not read his deposition, sir.

9 Q Let me show you, ma'am.

10 **MR. RUMLEY:** May I approach?

11 **THE COURT:** You can show her.

12 **MR. RUMLEY:** Your Honor and for counsel, it's page
13 50, line 18 of the deposition of Paul Nichols.

14 **BY MR. RUMLEY:**

15 Q Do you see that, ma'am?

16 A No, sir.

17 **MR. THAGARD:** Ma'am, it's inappropriate for him to
18 cross examine her on the testimony of Mr. Nichols when she said
19 she hasn't seen --

20 **THE COURT:** Overruled.

21 **BY MR. RUMLEY:**

22 Q Ma'am, do you see that?

23 A No, sir.

24 **MR. RUMLEY:** May I just approach the witness?

25 **THE COURT:** Just see what's wrong with it.

1 **MR. THAGARD:** And your Honor, I'd like to see a copy
2 of that as well.

3 **THE COURT:** Oh, it's on the -- the switch --

4 **MR. RUMLEY:** It's page 50, line 18.

5 **THE COURT:** Okay, hold up. Switch it off. It's on
6 the computer, so, hold up. Let's switch it off computer to
7 overhead. Don't do that; pick it up.

8 **MR. RUMLEY:** Oh, I'm sorry.

9 **THE COURT:** Now. Now you can put it on there.

10 **MR. RUMLEY:** All right.

11 **BY MR. RUMLEY:**

12 Q Mr. Nichols is the president of Vanderbilt, right,
13 Vanderbilt Mortgage, this mortgage company, correct?

14 A Yes, sir.

15 Q Can you start at page 15, I want you to read this to
16 yourself, okay? Line 18, what the question was and what the
17 answer is.

18 **(Witness complies)**

19 Q Can you see that?

20 **MR. THAGARD:** Your Honor, may I approach the ELMO so
21 can follow along with what he's --

22 **THE COURT:** Yes, you may.

23 **MR. THAGARD:** Thank you.

24 //

25 //

1 **BY MR. RUMLEY:**

2 Q Do you see that, ma'am?

3 A Yes, sir.

4 Q Is that true?

5 A We record calls, sir.

6 Q What did Mr. Nichols testify to?

7 A His answer was that we do not.

8 Q So who is telling the truth?

9 A We do record calls, sir.

10 Q Do you have any reason why Mr. Nichols wouldn't be telling
11 the truth about that?

12 **MR. THAGARD:** Your Honor, again I object. He's now
13 cross examining her on something that somebody else testified
14 to, and she's given her answer.

15 **MR. RUMLEY:** Mr. Nichols was a corporate
16 representative, your Honor, so he was testifying on behalf of
17 Vanderbilt in this deposition.

18 **MR. THAGARD:** Your Honor, that was taken a long time
19 ago, and she said she hasn't read it.

20 **THE COURT:** Overruled.

21 **BY MR. RUMLEY:**

22 Q Ma'am, do you have any explanation to the jury why it is
23 that the highest level person within this company would testify
24 that none of these calls are recorded?

25 A I do not know, sir.

1 Q And in fact, when you call people when you collect,
2 actually you advise them that you may record the call, right?

3 A I don't tell them that personally, no, sir. I think it's
4 on the recording if they call in, yes, sir.

5 Q And even though the recording advises them that the call
6 may be recorded, it's not recorded, true?

7 A I don't know, sir, which ones are or not.

8 Q Well, when Mr. Nichols gave a deposition on behalf of
9 Vanderbilt, did you read in that section where the customers
10 are warned that the call may be recorded but it's not really
11 recorded?

12 MR. THAGARD: Your Honor, he's testifying. She's
13 testified that she hasn't read it.

14 MR. RUMLEY: It's an admission by Vanderbilt. He was
15 a corporate representative and --

16 MR. THAGARD: The question is: Did she read it?

17 MR. RUMLEY: Okay, well --

18 MR. THAGARD: She's testified she hasn't read the
19 deposition.

20 BY MR. RUMLEY:

21 Q Do you see that, ma'am?

22 A Yes, sir.

23 Q Okay. The very next question that we just read, can you
24 read that?

25 MR. THAGARD: Same objection, your Honor.

1 **(Witness complies)**

2 **BY MR. RUMLEY:**

3 Q Is that a truthful statement?

4 A We do not advise them on the telephone when we are calling
5 the customer or when they call in. The recording does that,
6 sir.

7 Q And the fact that you don't actually record it, right?

8 A I don't know which ones are recorded, sir, or not.

9 Q Well, are any of the calls, collection calls that you
10 have, recorded?

11 A Yes, sir.

12 **MR. THAGARD:** Your Honor, asked and answered.

13 **BY MR. RUMLEY:**

14 Q Do we have any of these recorded conversations?

15 A I don't know, sir.

16 Q You were asked a number of questions yesterday about these
17 training programs and these manuals and that sort of thing. Do
18 you remember those questions?

19 A Yes, sir.

20 Q And I think you were asked about CP Exhibit 77. Do you
21 remember that?

22 A If you could bring it back up, sir. I don't recall the
23 numbers or anything.

24 Q If we look --

25 **MR. RUMLEY:** And this is admitted, CP 77.

1 **THE COURT:** Sir, that's admitted.

2 **MR. RUMLEY:** It's been admitted, CP 77.

3 **BY MR. RUMLEY:**

4 Q Do you remember this manual, going over this manual at
5 quite some length yesterday?

6 A Yes, sir.

7 Q All right. Now, when was this manual actually put into
8 place?

9 A I don't know the original date of the manual. I know it's
10 one that we use for training purposes.

11 Q If we look, the effective date of the manual that you-all
12 went over at some length is January of 2009.

13 A Yes, sir.

14 Q All right.

15 **MR. THAGARD:** Your Honor, I object. The documents we
16 went over yesterday were from 2003 and 2007, and the testimony
17 was that those manuals are regularly updated. That's a
18 misleading question.

19 **MR. RUMLEY:** I would ask that he stick to a legal
20 obligation and not a speaking objection.

21 **THE COURT:** Sustained.

22 **BY MR. RUMLEY:**

23 Q Ma'am, this manual --

24 **THE COURT:** I'm sorry, Mr. Rumley's objection is
25 sustained.

1 **BY MR. RUMLEY:**

2 Q Ma'am, this manual is from 2009, right?

3 A There are probably updates in that manual, sir, from 2009.
4 We update it regularly.

5 Q Well let's talk about those updates. It's true, is it
6 not, ma'am, that you-all are trained on techniques to collect
7 money, right?

8 A Yes, sir.

9 Q And your number one goal as a collections person is to
10 collect money, right?

11 A Yes, sir, and to help someone keep their house.

12 Q But it's to collect money, right?

13 A So that they can keep their house, sir.

14 Q Isn't it true that it's so important that you collect
15 money that you're actually compensated in your bonus based on
16 how well you can collect money, correct?

17 A We have a bonus structure, yes, sir.

18 Q And that bonus structure is based upon your success at
19 collecting money, right?

20 A At reducing delinquency, yes, sir.

21 Q And you're actually trained to pan for gold, right?

22 A Sir, if I may explain? I am trained to talk with a
23 customer, not to pan for gold. I don't know that terminology.

24 Q Well, let's look at Clayton Exhibit 80 which has been
25 admitted. It's an admitted document.

1 **(The exhibit is displayed)**

2 Q You see this, right?

3 A Yes.

4 Q Vanderbilt Mortgage, this is the company you work for,
5 right?

6 A Yes, sir.

7 Q And what does that say right there?

8 A 'Collection techniques'.

9 Q And that would be techniques on how to collect, right?

10 A Yes, sir.

11 Q And one of the things you're trained on, what's that?

12 A It says: 'Pan for gold'.

13 Q 'Persuading the customer to pay by appealing to them
14 or negotiating arrangements', correct?

15 A Yes, sir, that's what it says.

16 Q And one of the techniques that you're trained to use to
17 pan for gold is to use scare tactics, true?

18 A No, sir.

19 Q Would it be appropriate, ma'am, to use scare tactics on
20 people when you're collecting?

21 A No, sir.

22 Q But you do agree you call their employer, right?

23 A Yes, sir.

24 Q You can call -- It's in there you call the spouse's
25 employer, right?

1 A Yes, sir.

2 Q You call their neighbors, right?

3 A Yes, sir.

4 Q You can call other family members, right?

5 A Yes, sir.

6 Q And then if for whatever reason those don't work, you
7 actually send someone to their house, right?

8 A Yes, sir.

9 Q And you send someone to their place of business, right?

10 A Yes, sir, if it's necessary. But the house is where the
11 field representative goes.

12 Q Right. And the interesting thing is the field
13 representative that you're talking about doesn't even work for
14 Vanderbilt, does he?

15 A No, sir.

16 Q He works for CMH, the store, right?

17 A I think so, yes, sir.

18 Q Does that make any sense to you at all?

19 A I don't know the alignment of everything, sir. You'd have
20 to ask someone over field representatives.

21 Q Well, we'll ask one of the presidents. But my
22 understanding is the story goes that we heard during opening is
23 that the money is actually owed to Vanderbilt and not CMH,
24 right? Is that the story?

25 A The loans are paid to Vanderbilt, yes, sir.

1 Q It's true, is it not, that Vanderbilt services many loans?

2 A Yes, sir.

3 Q They service loans in which they don't own the debt, true?

4 A Loans that are acquired, loans that we bought from others,
5 yes, sir, we do.

6 Q Like, they service loans with Chase Manhattan Bank, right?

7 A Yes, sir.

8 Q The money is owed to Chase Manhattan but Vanderbilt is
9 just servicing them, right?

10 A Yes, sir, we have --

11 Q That means the customer fills out a deal and they write a
12 check to Vanderbilt, right?

13 A Yes, sir.

14 Q That doesn't mean they owe the money to Vanderbilt, right?

15 A We are the servicer, so, yes, they're paying it to us.

16 Q Right, they're paying you but they don't owe you the
17 money?

18 A We are the servicer, so they're paying us the money.

19 Q And for example, you mentioned these field calls with
20 Mr. Flores and Mr. King, right?

21 A Yes, sir.

22 Q And just so we understand, what you did is the Clayton
23 store, the CMH employees, not Vanderbilt employees, would go to
24 their homes and try to collect, right?

25 A At that time, the sales managers either would hire

1 someone, I think, or they would go themselves to get them on
2 the phone with us.

3 Q But those people would be CMH, right?

4 A But they're trying to help Vanderbilt to collect the loan
5 that's owed to Vanderbilt.

6 Q Why would a salesperson care about whether or not a
7 customer is going to make a payment?

8 A If I sold the home to the customer, I would care as well
9 whether or not they were going to be able to keep their home.

10 Q I mean, ma'am, can you ever imagine that I'd go -- I go
11 and I buy a car. The salesperson comes out and sells me a car
12 and then, for whatever reason, I miss a payment and all of a
13 sudden the salesperson comes knocking on my door saying where's
14 the payment? Can you ever imagine that happening?

15 A Not with a vehicle, no, sir.

16 Q In fact, when you have these field reps come in, you guys
17 actually train them to be good-cop/bad-cop?

18 A I don't know how they're trained, sir. That's not my
19 department.

20 **MR. RUMLEY:** Your Honor, this is an unadmitted
21 exhibit, Exhibit 184.

22 **(Mr. Rumley confers with Mr. Thagard)**

23 **MR. THAGARD:** I'm going to object to him examining
24 the witness on this. This is not a Vanderbilt document. It
25 was produced by CMH. It's part of a larger CMH manual.

1 **THE COURT:** I'm sorry, does that say Vanderbilt on
2 there?

3 **MR. THAGARD:** It does. But it's part of a larger CMH
4 manual.

5 **MR. RUMLEY:** Your Honor, this is the manual they
6 produced when we examined the witnesses on it. My
7 understanding is their only objection is that it's highlighted.

8 **MR. THAGARD:** What's highlighted?

9 **MR. RUMLEY:** Your Honor, we would offer Exhibit 184,
10 which is a Vanderbilt Mortgage and Finance collections manual.

11 **THE COURT:** What's the objection?

12 **MR. THAGARD:** The objection is it's not a Vanderbilt
13 document, your Honor. It's a CMH Homes document.

14 **THE COURT:** And it's Exhibit Number what?

15 **MR. RUMLEY:** One eighty-four.

16 **THE COURT:** Let me see it at the bench, please.

17 **(Bench conference begins at 9:16 a.m.)**

18 **MR. RUMLEY:** It talks about the bad-cop/good-cop and
19 that the Vanderbilt person is the good cop; they're the bad
20 cop. So she's the bad cop; CMH are the good cop. And it talks
21 about the field chase.

22 **THE COURT:** All the (indiscernible) and customers
23 come from VMH, Vanderbilt, and not -- you say senior manager,
24 (indiscernible) manager.

25 **MR. RUMLEY:** And this document, your Honor, is also

1 already admitted, the good-cop/bad-cop on their side. I'll
2 show you if you'll --

3 **THE COURT:** Show it to me.

4 **REPORTER:** Get that a little bit closer to you.

5 **MR. RUMLEY:** CP 70.

6 **(Pause - The Court reviews the exhibit)**

7 **MR. RUMLEY:** I think, your Honor, their objection is,
8 is that we haven't included a thousand-page document. If
9 you'll see CP 70, that is just a few pages out of this huge
10 manual. And what they don't -- they don't --

11 **MR. THAGARD:** It's a manual about CMH Homes; it's
12 (indiscernible), correct, David?

13 **MR. RUMLEY:** They don't want -- They want it to be
14 big --

15 **THE COURT:** It says Vanderbilt on here.

16 **MR. THAGARD:** It does, your Honor.

17 **THE COURT:** It's in ink. And it says all letters to
18 the customer should be from Vanderbilt.

19 **MR. THAGARD:** That's training that's received by the
20 CMH retail people.

21 **THE COURT:** Did you supply this to defendant?

22 **MR. THAGARD:** Yes.

23 **MR. RUMLEY:** It has been produced, yes, ma'am.

24 **THE COURT:** And who produced it?

25 **MR. THAGARD:** We did, CMH Homes.

1 **MR. RUMLEY:** But she's --

2 **THE COURT:** You say 'we', but she's your witness from
3 Vanderbilt.

4 **MR. THAGARD:** Correct.

5 **THE COURT:** Is that right?

6 **MR. THAGARD:** CMH Homes produced that document.

7 **MR. RUMLEY:** And the document has her being the bad
8 cop.

9 **THE COURT:** So who created the document?

10 **MR. THAGARD:** CMH Homes.

11 **THE COURT:** How could they create a document with the
12 Vanderbilt Mortgage and Finance?

13 **MR. THAGARD:** It's -- that's just part of the way the
14 retailing and managing document reads, your Honor.

15 **THE COURT:** Okay, your objection -- You're not
16 claiming it's not authentic?

17 **MR. THAGARD:** Ma'am?

18 **THE COURT:** You're not claiming it's not authentic?

19 **MR. THAGARD:** I'm sorry, I didn't hear you.

20 **THE COURT:** You're not claiming this is not
21 authentic?

22 **MR. THAGARD:** Oh, no, ma'am. No objection to
23 authenticity.

24 **MR. RUMLEY:** It's a CMH Homes manual.

25 //

1 **THE COURT:** Okay, 184 is admitted.

2 **(Bench conference concludes at 9:19 a.m.)**

3 **(Defendants' Exhibit Number 184 was received in evidence)**

4 **(Pause)**

5 **BY MR. RUMLEY:**

6 Q If you'd look right here, ma'am. What does that say?

7 A Vanderbilt Mortgage and Finance, Incorporated.

8 Q And you were telling us about these field calls, right?

9 A Yes, sir.

10 Q Where you would be an account rep, for example, right?

11 A Yes, sir.

12 Q A VMF account rep?

13 A Yes, sir.

14 Q And then the person that would go do the field call would
15 be someone in the retail side of the store?

16 A That or someone we've hired, like an outside agency.

17 Q Okay. And it's true, is it not, that you are trained as
18 this good-guy versus bad-guy?

19 A Is there a date on that document, may I ask?

20 Q November of 2003.

21 A Thank you.

22 Q Is that true?

23 A I have not trained that way, sir.

24 Q Well, does it matter what date it is? Is that an
25 acceptable way, in your opinion, ma'am, to collect on a debt?

1 A I don't think it's acceptable, sir, but I've never seen
2 that document before.

3 Q And it says, if we look here, the sales manager plays the
4 good guy while the account rep, the senior account rep or
5 manager, is the bad guy.

6 A I was never trained that way, sir.

7 Q Do you think that is an acceptable way to train the
8 individuals within either Vanderbilt or CMH on collecting a
9 debt?

10 A No, sir. And I was never trained that way and I don't
11 know of anyone that was trained that way, sir.

12 Q What's your explanation of why it's in the manual?

13 A I don't know, sir. I've never seen that document.

14 Q I asked you before whether or not it was appropriate to
15 use scare tactics. It's not, is it?

16 A No, sir.

17 Q Would this company train you or your other reps to use
18 scare tactics?

19 A No, sir.

20 Q Let me show you -- We looked at this earlier, and this is
21 collection techniques. This is Clayton Parties' 80; it's been
22 admitted. Vanderbilt collection techniques, do you see that?

23 A Yes, sir.

24 Q And if we come down, they train you to use assertive
25 behavior, correct?

1 A Yes, sir.

2 Q And then if we come down to here (**indicates**), it says:

3 'Your success in collections will depend on your
4 ability to maintain a business relationship with our customers.
5 This relationship is founded on communications. If the
6 customer feels threatened by you, they will avoid your calls.
7 While aggressive scare tactics may work occasionally, you will
8 eventually find it harder to contact the borrower because they
9 will avoid you.'

10 Did I read that right?

11 A Yes, sir.

12 Q What aggressive scare tactics may work occasionally?

13 A I was never trained with using scare tactics, sir.

14 Q What's the explanation for it being in as a collection
15 technique in the manual?

16 A I don't know. I'm sorry; I don't know, sir. I've never
17 seen that in any of the manuals that I review.

18 Q Well, I mean you just read it in the manual.

19 A Yes, sir.

20 Q Right? And it's collection techniques for you and your
21 company, right?

22 A Yes, sir.

23 **MR. THAGARD:** David, what page is that?

24 **MR. RUMLEY:** Sorry?

25 **MR. THAGARD:** What page is that?

1 **MR. RUMLEY:** Seventeen.

2 **BY MR. RUMLEY:**

3 Q Is there any circumstance at all, ma'am, when you're out
4 there panning for gold to use scare tactics?

5 A I don't pan for gold and I do not use scare tactics,
6 Mr. Rumley. I was never trained that way.

7 Q What manual were you trained off of?

8 A The account representative or the collections manual.

9 Q Not this one?

10 A I don't know what those -- the particular ones you're
11 showing me because I've never seen them, sir.

12 Q Well, ma'am, this, if we look right here (**indicates**), do
13 you see this exhibit? This is actually Clayton Parties'
14 exhibit. This is Vanderbilt's exhibit.

15 A Yes, sir.

16 Q And all the exhibits that you and Mr. Thagard went over to
17 get ready for your testimony, you didn't go over collection
18 tactics, did you?

19 A I looked at the manual, yes, sir.

20 Q You looked at this?

21 A I looked at several notes, sir, yes.

22 Q So you knew about the scare tactics, right?

23 A I'm not trained that way, Mr. Rumley.

24 Q Did you know that it was in here?

25 A I've never seen the notes before, sir.

1 Q If we look at Clayton Parties' CP 70, page 439, we have
2 another manual. And do you see:

3 'Once a field call is approved, the most effective
4 field call script is what we call the 'good-guy versus bad-
5 guy'.'

6 Is that in this manual as a mistake, too?

7 A I've never read that part of the manual. I don't know
8 which manual that is.

9 Q You agree with me that if a customer no longer owns the
10 debt that it would be a violation to call and collect on it,
11 true?

12 A Yes, sir.

13 Q And certainly there is no doubt in your mind that from
14 October of 2005 up till 2009, you-all were calling Flores and
15 King, right? You were making phone calls?

16 A Yes, sir.

17 Q And at any time, did you tell them that the debt was paid
18 in full?

19 A No, sir.

20 Q Now, one of the things that account reps do is to look for
21 red flags in a file, right?

22 A Yes, sir.

23 Q And one of the red flags that you look for is, for
24 example, if there's forgery or fraud in the transaction, right?

25 A Red flags to me, sir, as an account representative means

1 if the customer has gotten a divorce, if they've gotten sick,
2 if they've had medical issues or if they've been out of work.

3 Q One of the things before you start foreclosing on someone
4 is you look and make sure the signatures are in the documents,
5 right?

6 A We look for the signatures for the purpose of sending the
7 notices correctly.

8 Q You look at the documents to make sure they're properly
9 signed?

10 A Yes, sir. The contract, yes, sir.

11 Q And one of the things -- well, let me ask you this: Do you
12 have the authority, if you figure out, if you learn that a
13 signature was forged or a document was fraudulently notarized,
14 do you have the authority to discharge any amount of the debt?

15 A No, sir.

16 Q Do you understand that -- Who is David Barton?

17 A He is the collections manager.

18 Q He's one of your bosses?

19 A Yes, sir.

20 Q Does he have the authority to discharge the debt if he had
21 determined that there was forgery or notary fraud?

22 A I don't know who's in charge of it, sir.

23 Q Well, if Mr. Barton testified that he has the authority to
24 discharge up to \$20,000 if he found forgery or fraud, do you
25 have any reason to disagree with that?

1 A I do not. I did not read his deposition, sir.

2 Q Well you agree with me that if there's fraud or forgery in
3 the transaction that that's a situation where the debt can be
4 discharged, right?

5 A I'm not an expert at that, sir.

6 Q I'm not asking you if you're an expert. I'm saying within
7 the company, if you're calling someone and you find out that
8 the document has been --is fraudulent or notary fraud or
9 forged, is that a situation where you at least notify your
10 superiors?

11 A If I have any idea, yes, sir.

12 Q And what you're telling this jury is you have no idea that
13 if they find out that it's fraudulent or forged or notary fraud
14 or any way that they would discharge the debt?

15 A I do not know that. My job is to collect the payments on
16 the loan owed to Vanderbilt.

17 Q You agree that that would be a good policy, wouldn't it?

18 A Yes, sir, if I knew of anything like that.

19 Q Yeah. I mean if it was discovered that there was notary
20 fraud or something in the transaction, that's a good policy,
21 would it not, number one, to notify your customer and say, hey,
22 we have these problems with the documents? That's a good
23 policy, right?

24 A I would assume so, yes, sir.

25 Q And certainly if you were aware of notary fraud in

1 documents or forged documents or fraud, that's one of the
2 things you would do is notify the customer, right?

3 A I would notify my supervisor. That is up to them as far
4 as what course is taken at that point.

5 Q You wouldn't tell the customer?

6 A It's my job to collect the payments, sir. I have no clue
7 of anything else.

8 Q All this stuff about rabbits and all that stuff, if you
9 found out that a signature was forged, you wouldn't tell the
10 customer?

11 A If I knew that, sir. I mean I -- my job is to collect the
12 payments on the loan, so if I'm calling them to discuss the
13 payments. That's my job.

14 Q I understand that's your job, ma'am. I'm just asking you:
15 If you became aware that a signature was forged or there was
16 notary fraud, would you tell the customer?

17 A Yes, sir.

18 Q And do you agree that it would be a good policy within
19 this company that if they found out that a signature was forged
20 in the transaction or there was notary fraud, a good policy is,
21 is to discharge the debt, release the debt, right?

22 A No, sir, not under all circumstances.

23 Q Under what circumstances is it a good policy, ma'am, to
24 discharge the debt when you find out that a signature is forged
25 or a notary is forged?

1 **MR. THAGARD:** Your Honor, may I object? She's
2 testified she doesn't make policy --

3 **THE COURT:** Sustained.

4 **MR. THAGARD:** -- and she doesn't know anything about
5 it.

6 **BY MR. RUMLEY:**

7 Q You were asked about the payment history. Do you remember
8 that?

9 A Yes, sir.

10 Q This is CP -- Clayton Parties' 17.

11 **(The exhibit is displayed)**

12 Q Do you see that?

13 A Yes, sir.

14 Q It says 'Repurchase'. Do you know what that means?

15 A I do not know for sure the exact definition of a
16 repurchase. I know that we do investor changes a lot of times
17 where we'll buy a loan back from an investor that we've sold it
18 to.

19 Q Because this loan was actually sold to someone else,
20 right?

21 A This was a Vanderbilt loan, sir. It was originated with
22 Vanderbilt.

23 Q And was it sold to someone else?

24 A I don't know, sir.

25 Q Then who repurchased this loan in 2009?

1 A I don't know, sir.

2 Q Do you know or are you aware of circumstances where
3 Vanderbilt is required or obligated to repurchase loans that
4 they had previously sold to investors if they discover fraud or
5 forgery in the transaction?

6 A No, sir, I don't.

7 Q That would be someone else?

8 A Yes, sir.

9 Q All right.

10 MR. RUMLEY: Thank you, ma'am. That's all I have.

11 THE WITNESS: Thank you.

12 THE COURT: Yes, sir?

13 MR. B. GUTIERREZ: May I proceed with asking
14 questions?

15 THE COURT: Absolutely.

16 MR. B. GUTIERREZ: Good morning, Ms. Russell.

17 THE WITNESS: Good morning.

18 MR. B. GUTIERREZ: I have a few questions.

19 THE WITNESS: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. B. GUTIERREZ:

22 Q Ms. Russell, you testified yesterday that you called
23 Mr. Flores and Mr. King many times over pretty much a seven-
24 year period, is that correct?

25 A Yes, sir.

1 Q How many accounts did you say you were handling during
2 that time?

3 A If I remember correctly, the bucket that I was responsible
4 for had approximately 800 accounts, I think.

5 Q How many other accounts -- How many other of those 800
6 accounts besides the account pertaining to Mr. Flores and
7 Mr. King do you have this specific recollection about calls and
8 conversations about events that took place back in 2002?

9 A Would you like names, sir?

10 Q No, I just want numbers.

11 A Probably a dozen that I had a good relationship with, but
12 if I saw notes I would remember more.

13 Q You were not the only person that was calling Mr. Flores
14 and Mr. King, is that correct?

15 A No, sir.

16 Q I believe there was a total of 60, 60 separate account
17 representatives that were calling Mr. Flores and Mr. King, is
18 that correct?

19 A I'm not sure of the amount, sir. I had their loan off and
20 on for about four years.

21 Q You're Kim Russell, is that correct?

22 A Yes, sir.

23 Q Do you know Sherry Wright (phonetic)?

24 A The name is familiar, yes, sir.

25 Q Do you know Rebecca Stenz (phonetic)?

- 1 A No, sir.
- 2 Q Do you know Susan Galloway?
- 3 A Yes, sir.
- 4 Q Do you know Angela Hecklin (phonetic)?
- 5 A Yes, sir.
- 6 Q Tiffany Lewis?
- 7 A Yes, sir.
- 8 Q Did I ask you about Sherry Wright?
- 9 A Yes, sir, you did.
- 10 Q Sarah Moses?
- 11 A Yes, sir.
- 12 Q Annie Hatchel (phonetic)?
- 13 A Yes, sir.
- 14 Q Charlene Moore (phonetic)?
- 15 A The name sounds familiar.
- 16 Q Anne Richmond (phonetic)?
- 17 A Yes, sir.
- 18 Q Kirk Wilkinson (phonetic)?
- 19 A Yes, sir.
- 20 Q Deborah Carter?
- 21 A No, sir.
- 22 Q Donna Fox?
- 23 A No, sir.
- 24 Q Barr Buckley (phonetic)?
- 25 A Yes, sir.

- 1 Q Did I ask you about Rebecca Russell?
- 2 A No, sir, you did not, but yes, I know her, sir.
- 3 Q Sheila Pratt?
- 4 A Yes, sir.
- 5 Q Renia Henderson (phonetic)?
- 6 A Yes, sir.
- 7 Q Rebecca Profit (phonetic)?
- 8 A No, sir.
- 9 Q Melissa Duan, Doan?
- 10 A Doan? Yes, sir.
- 11 Q Michael Hood?
- 12 A Yes, sir.
- 13 Q Annie Robinson?
- 14 A No, sir.
- 15 Q Levy Ritchie (phonetic)?
- 16 A Yes, sir.
- 17 Q Dan Hatcher?
- 18 A No, sir.
- 19 Q Frenchie Mitchell (phonetic)?
- 20 A Yes, sir.
- 21 Q Sarah Hill Holland (phonetic)?
- 22 A Yes, sir.
- 23 Q Melissa Payne (phonetic)?
- 24 A No, sir.
- 25 Q Greg Trott (phonetic)?

- 1 A Yes, sir.
- 2 Q Keith McAnis (phonetic)?
- 3 A McAnis? Yes, sir.
- 4 Q McAnis. Jennifer Shad (phonetic)?
- 5 A Yes, sir.
- 6 Q Juanita Walton?
- 7 A Yes, sir.
- 8 Q Norma Wood?
- 9 A No, sir.
- 10 Q Kerry Hood (phonetic)?
- 11 A Yes, sir.
- 12 Q Rebecca -- I think I asked you about Rebecca Stenz, right?
- 13 A Yes, sir.
- 14 Q Susan Galloway?
- 15 A You asked -- Yes, sir.
- 16 Q S. Hollingsworth (phonetic)?
- 17 A Yes, sir.
- 18 Q Dennis Ogle (phonetic). I'm not sure how it's --
- 19 A Can you spell the last name for me, please?
- 20 Q O-g-l-e.
- 21 A Ogle.
- 22 Q Ogle?
- 23 A Yes, sir.
- 24 Q Regina Latham (phonetic)?
- 25 A Yes, sir.

1 Q Alison Simpson (phonetic)?

2 A Yes, sir.

3 Q Aaron Faulkner (phonetic)?

4 A Yes, sir.

5 Q Melissa Crabtree (phonetic)?

6 A Yes, sir.

7 Q Misty McMahon (phonetic)?

8 A Yes, sir.

9 Q Mitch Sloan (phonetic)?

10 A Yes, sir.

11 Q Candace Murphy?

12 A Yes, sir.

13 Q Todd Hickman?

14 A Yes, sir.

15 Q Annette Boreng (phonetic)?

16 A No, sir.

17 Q Danielle Gibson?

18 A Yes, sir.

19 Q David Banner?

20 A Yes, sir.

21 Q Kathy Peake (phonetic)?

22 A Yes, sir.

23 Q Christy Kwyat (phonetic)?

24 A Yes, sir.

25 Q Dennis Burk?

- 1 A No, sir.
- 2 Q Christy Wilson?
- 3 A Yes, sir.
- 4 Q David Wimberley?
- 5 A Yes, sir.
- 6 Q Eric Floyd (phonetic)?
- 7 A Yes, sir.
- 8 Q Ginger Mangen?
- 9 A Mangen; no, sir.
- 10 Q Kendall, and you knew her last name?
- 11 A I did.
- 12 Q Kendall Owens (phonetic)?
- 13 A Yes, sir.
- 14 Q Angelina Dugan (phonetic)?
- 15 A No, sir.
- 16 Q David Buddle?
- 17 A Can you spell it for me?
- 18 Q B-u-d-d-l-e.
- 19 A Yes, sir.
- 20 Q Pete Covington?
- 21 A Yes, sir.
- 22 Q Theresa Brown?
- 23 A Yes, sir.
- 24 Q Angie McMahon?
- 25 A Yes, sir.

1 Q Angie Robinson?

2 A No, sir.

3 Q Kevin Kern (phonetic)?

4 A Yes, sir.

5 Q The majority of those people work under you or with you?

6 A Either account representatives or legal or insurance.

7 Q Did you know that these people were calling Mr. Flores and
8 Mr. King?

9 A Yes, sir.

10 Q When did you find out that hundreds of these releases had
11 been filed concerning transactions that had occurred at the
12 Corpus store here, store 214?

13 A I don't know the details, sir. I just know that there
14 were some land releases done. I was already -- I don't know,
15 sir.

16 Q But you did know that hundreds of releases were filed?

17 A Yes, sir.

18 Q Okay. And you also found out that aside from filing those
19 mass releases, hundreds of releases out of the Corpus store,
20 that the Corpus store was also shut down and closed, right?

21 A At some point I knew that they had closed. I don't know
22 when, sir.

23 Q Some of the documents you talked about yesterday talked
24 about emphasizing ethical behavior. Do you remember that?

25 A Yes, sir.

1 Q And how important it is that you get trained in conducting
2 yourselves in an ethical manner. Do you remember that?

3 A Yes, sir.

4 Q If you discovered any fraud in any of the transactions,
5 you know, any transaction accounts that you were collecting on,
6 do you believe ethically that you should continue to collect
7 money on those accounts?

8 A The situation -- it would depend. I don't know the
9 circumstances on everything.

10 Q Do you think you should stop calling the individual?

11 A No, sir, not until I found out exactly what was going on.

12 Q Do you think that maybe you should recall that loan, that
13 transaction, call the customer and explain what your findings
14 are after you've had an opportunity to investigate it?

15 A If it was my job to do that, yes, sir.

16 Q Do you think it would be ethical to try to correct the
17 fraud that has occurred?

18 A Yes, sir.

19 Q When you discovered that these hundreds of releases had
20 been filed and that the Corpus store here had been shut down,
21 had been closed, did it give you any concern that you were
22 still collecting on this account?

23 A To be honest, sir, I collect on the loans that are owed to
24 Vanderbilt, so the land is not really anything that I deal with
25 on a day to day basis.

1 Q Well, some of the documents that were shown by Mr. Thagard
2 and Mr. Rumley talked about the field chase. Do you remember
3 that?

4 A Yes, sir.

5 Q And one of the things that those documents say is that not
6 only do you go to their employment, you call their employers.
7 I mean in this particular case, you were calling neighbors?

8 A Yes, sir.

9 Q You were calling relatives?

10 A Yes, sir.

11 Q But you never called the landowner. You never called
12 Mr. Flores' sister, Maria Trevino, you never called the
13 landowners, Mr. Arturo Trevino or Maria Trevino?

14 A Sir, I don't know if they were called or not, but they
15 would be someone, if they were a point of contact and we had
16 their number, that we would have called.

17 Q That wasn't my question. You never called the landowners?

18 A I don't recall, sir. I don't know if I called personally
19 or not. I'm sure if the number was there I would have called.

20 Q Did you find any document anywhere where you called or
21 anyone that works in your collection department, that you ever
22 called the landowners?

23 A I can't remember, sir. There were so many numbers called;
24 I don't know the names.

25 Q Isn't it true, Ms. Russell, that the reason that you

1 didn't call the landowners is because you knew that there was
2 some fraud and forgery going on not only in this transaction
3 but hundreds of transactions, right?

4 A No, sir.

5 Q Do you remember a lady by the name of Anita Perez, a
6 landowner --

7 A No, sir.

8 Q -- that called your office complaining that someone had
9 forged her signature?

10 A No, sir.

11 Q You don't remember those calls?

12 A I do not, sir.

13 Q Out of the 800 accounts that you handled, you don't
14 remember that one?

15 A No, sir.

16 Q Okay. Do you remember a lady by the name of --

17 **MR. THAGARD:** Your Honor, may we approach?

18 **THE COURT:** Yes.

19 **(Bench conference begins at 9:41:30 a.m.)**

20 **MR. THAGARD:** This line of testimony is clearly
21 covered by the motion in limine.

22 **THE COURT:** It is.

23 **MR. THAGARD:** And we find it objectionable.

24 **MR. RUMLEY:** Other transactions that we've seen per
25 your order --

1 **THE COURT:** No (indiscernible).

2 **MR. THAGARD:** -- they're not to examine.

3 **MR. RUMLEY:** Not to bring up before the jury.

4 **MR. THAGARD:** Any other things other than notary.

5 **THE COURT:** That's what I said. You don't remember
6 that?

7 **MR. B. GUTIERREZ:** I had understood, your Honor, that
8 I could ask questions concerning --

9 **THE COURT:** No, you're (indiscernible) questions --

10 **MR. B. GUTIERREZ:** I apologize to the Court.

11 **THE COURT:** -- that those transaction people are the
12 transaction people, and that one would.

13 **MR. B. GUTIERREZ:** Two fourteen.

14 **THE COURT:** Two fourteen?

15 **MR. B. GUTIERREZ:** Yes, your Honor.

16 **THE COURT:** Only complaining about the notary.

17 **MR. B. GUTIERREZ:** I will withdraw the question on
18 the record, your Honor.

19 **(Bench conference concludes at 9:42:30 a.m.)**

20 **MR. B. GUTIERREZ:** Your Honor, we would withdraw that
21 question.

22 **CROSS EXAMINATION RESUMED**

23 **BY MR. B. GUTIERREZ:**

24 Q I believe, Ms. Russell, when you were looking at the
25 payment history on Mr. Flores' and Mr. King's account that the

1 balance that you are suing Mr. Flores and Mr. King was, I
2 believe, \$29,000?

3 A Around \$28,000 and something, yes, sir.

4 Q Okay.

5 (Pause)

6 MR. B. GUTIERREZ: Those are all the questions I have
7 at this time, your Honor.

8 THE COURT: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. THAGARD:

11 Q Ms. Russell, Mr. Rumley asked you some questions about
12 whether Vanderbilt services loans owned by other institutions?

13 A Yes, sir.

14 Q Okay. Based on your review of the file, do you know
15 whether Vanderbilt owned the Flores and King loan?

16 A It was a Vanderbilt loan, yes, sir.

17 Q So it wasn't owned by somebody else?

18 A No, sir.

19 Q The monies were due to Vanderbilt?

20 A Yes, sir.

21 Q And he read out a whole list of names of Vanderbilt
22 people. I believe that was Mr. Gutierrez. And do you
23 understand that some of those people had nothing to do with
24 account representatives and collections?

25 A Yes, sir.

1 Q For instance, he mentioned a name of somebody out of the
2 -- related to insurance, correct?

3 A Yes, sir.

4 Q And they were trying to help Mr. Flores and Mr. King
5 process an insurance claim?

6 A Yes, sir.

7 Q Okay. Was that something you were involved in helping
8 them with as well?

9 A Only to give them the advice when the truck hit the home
10 of who to contact.

11 Q You pointed them in the right direction?

12 A Yes, sir.

13 Q Okay. And many of those manuals that Mr. Rumley showed
14 you are not Vanderbilt manuals, are they?

15 A No, sir.

16 Q Now he showed you one.

17 **MR. THAGARD:** Would you please pull up Plaintiffs'
18 80, page 17? And highlight the underlined sentence, please.

19 **(The page is displayed and highlighted as requested)**

20 **BY MR. THAGARD:**

21 Q And that says:

22 'While aggressive scare tactics may work
23 occasionally, you will eventually find it harder to contact
24 that borrower because they will avoid you.'

25 Now, are they training you to avoid scare tactics?

1 **MR. RUMLEY:** Objection to form --

2 **THE WITNESS:** From that sentence, yes, sir.

3 **MR. RUMLEY:** -- your Honor. She answered before she
4 hadn't even seen it before, so now he's asking her for opinion.

5 **BY MR. THAGARD:**

6 Q Are you trained to use scare tactics?

7 A No, sir.

8 Q Do you use scare tactics?

9 A No, sir.

10 Q Have you ever used scare tactics?

11 A No, sir.

12 Q Does the company encourage you to not use scare tactics?

13 A Yes, sir.

14 **(Pause)**

15 **MR. THAGARD:** Your Honor, we pass the witness.

16 **THE COURT:** Thank you, sir. Anything further,
17 Mr. Rumley?

18 **MR. RUMLEY:** No, your Honor.

19 **THE COURT:** Mr. Gutierrez?

20 **MR. B. GUTIERREZ:** No, your Honor.

21 **THE COURT:** Thank you, ma'am; you may stand down.

22 **THE WITNESS:** Thank you, your Honor.

23 **(Kim Russell exits the witness stand)**

24 **THE COURT:** Call your next witness.

25 **MR. RANGEL:** David Booth.

1 **THE COURT:** Would you administer the oath, Ms. Gano?

2 **DAVID BOOTH, PLAINTIFFS' WITNESS, SWORN)**

3 **THE CLERK:** Have a seat, please, and watch your step.

4 **(David Booth takes the witness stand)**

5 **THE CLERK:** Your Honor, one of the jurors was asking
6 to take a break.

7 **THE COURT:** Sorry?

8 **THE CLERK:** One of the jurors was asking if they
9 could take a break.

10 **THE COURT:** We'll take a ten-minute break.

11 Would you please stand for the jury?

12 **(The jury exits the courtroom at 9:47 a.m.)**

13 **THE COURT:** Thank you. You may stand down. We'll
14 just take a break.

15 **(David Booth exits the witness stand)**

16 **THE COURT:** Anything to take up outside the presence
17 of the jury?

18 **MR. RANGEL:** Not at this time, your Honor.

19 **(Recess from 9:47 a.m. to 9:49 a.m.)**

20 **(Outside the presence of the jury)**

21 **THE COURT:** Hold up.

22 **MS. RODRIGUEZ:** Okay.

23 **THE COURT:** Now.

24 **MR. LOCHRIDGE:** Thank you very much, your Honor.

25 Mr. Rumley and I have discussed that they're agreeable to our

1 admitting Clayton Parties' Exhibits 163 and 164, which are
2 individual exhibits. They are in --

3 **THE COURT:** Wait a minute, Clayton 164 has already
4 been admitted, and 164 through 168 but not 163.

5 **MR. LOCHRIDGE:** Then it's just 163; then it's just
6 163.

7 **THE COURT:** Is that right, Mr. Rumley?

8 **MS. UNIDENTIFIED:** Yes, that's right.

9 **MR. RUMLEY:** I think it's already been admitted in
10 Exhibit 80, right, Mr. Lochridge?

11 **MR. LOCHRIDGE:** Yes, it's a part of a big thick
12 exhibit, and this way we don't have to wade through that
13 exhibit to find it, that Exhibit 163.

14 **MR. RUMLEY:** I have no objection, your Honor.

15 **THE COURT:** Exhibit 163 is admitted.

16 **(Clayton Parties' Exhibit Number 163 is received in**
17 **evidence)**

18 **MR. LOCHRIDGE:** And 164 already was. Okay, thank you
19 very much.

20 **(Recess continues from 9:50 a.m. to 9:57 a.m.)**

21 **REPORTER:** On the record?

22 **THE COURT:** Yes, please.

23 **(David Booth retakes the witness stand)**

24 **(Pause)**

25 **(The Court confers with the Clerk)**

1 **THE COURT:** Oh yes, please.

2 **THE CLERK:** All rise for the jury.

3 **(The jury enters the courtroom at 9:57 a.m.)**

4 **THE COURT:** Thank you. You may be seated.

5 Mr. Rangel, you may proceed.

6 **MR. RANGEL:** Thank you, your Honor.

7 Good morning, Mr. Booth.

8 **THE WITNESS:** Good morning.

9 **DIRECT EXAMINATION**

10 **BY MR. RANGEL:**

11 Q Would you please state your full name for the jury?

12 A David Mason Booth.

13 Q And where do you live, Mr. Booth?

14 A I live in Knoxville, Tennessee.

15 Q And how are you employed?

16 A I am president of CMH Homes.

17 Q And --

18 **MR. THAGARD:** Jorge, may I interrupt for a second?

19 **(Mr. Thagard confers with Mr. Rangel)**

20 **BY MR. RANGEL:**

21 Q Could you give us a little personal background as far as
22 education, employment leading up to your present position?

23 A Yes, sir. I grew up in eastern North Carolina. I was
24 born in Beaufort, North Carolina, and went to college at the
25 University of North Carolina, Chappell Hill, and I got a

1 business degree in 1974. Worked for a bank for a short period,
2 and then got into the mobile home business there locally near
3 where I grew up actually, and was in that for 11 years. That
4 began in 1976, was there for 11 years. And then I sold boats
5 and insurance for a real short period, and then joined CMH in
6 1990. The first five years I was there I was vice president of
7 sales, and for the last 15 years I've been president of the
8 retail company.

9 Q Mr. Booth, before we get into more details of your
10 testimony, I want to ask you some questions about CP Exhibit
11 13.

12 (Pause - technical problem)

13 MR. UNIDENTIFIED: Sorry, we're having a problem.

14 MR. RANGEL: We'll come back to that, Mr. Booth.
15 We're having technical problems.

16 BY MR. RANGEL:

17 Q What is CMH Homes?

18 A We are a retail company. We sell and install mobile homes
19 throughout the country.

20 Q Is there another name for a mobile home that is sometimes
21 used?

22 A You may hear 'manufactured home', you may hear 'trailer'.
23 Those will be the two that you hear most common. Mobile home
24 is, I think, the most common.

25 Q And at present, what are your primary responsibilities?

1 A I oversee the retail company. I work with a number of
2 different individuals that travel throughout the country that
3 help to supervise the sales centers. And primarily we sell
4 homes at each of those stores, and we install those. We try to
5 insure that we buy good homes and then do a good job of
6 delivering them and making customers happy.

7 Q You made reference to 'sales center'. Sales center 214,
8 is that the same as Lot 214, the one we've been hearing about?

9 A Yes, sir. We use those terminologies interchangeably.
10 But it just represents a specific sales center in a specific
11 town.

12 Q Does CMH Homes ever use the name 'Clayton Homes'?

13 A Yes, sir. We operate under various trade names. Clayton
14 Homes is a trade name for some of the retail stores. We also
15 use Oakwood Homes. We've used Love Homes in the past. We have
16 different ones.

17 Q And are you familiar with Vanderbilt Mortgage and Finance,
18 Inc., another party in this litigation?

19 A Yes, sir.

20 Q And what is the relationship between CMH Homes with
21 Vanderbilt and any other entity in the organization?

22 A We are one subsidiary of Clayton. Vanderbilt would be a
23 separate subsidiary. We sell and install the homes, and
24 Vanderbilt is one of the lenders that we use for financing
25 those homes.

1 Q And when you say 'Clayton', are you referring to Clayton
2 Homes, Inc.?

3 A Yes, sir.

4 Q So Vanderbilt and CMH Homes are subsidiaries of CMH?

5 A Yes, sir.

6 Q I'm sorry, CH, Inc., Clayton Homes, Inc.?

7 A Clayton Homes, Inc., yes, sir.

8 Q Is that also known as CHI?

9 A CHI, right.

10 Q Okay. Mr. Booth, we've heard some testimony regarding
11 land-in-lieu transactions. Can you explain what those
12 transactions are?

13 A Customers come to us, and they're all different. Each
14 customer is different. Some customers have cash down payment
15 that they plan to invest in the home. Some customers come to
16 us that want to trade, maybe an older home. We've traded for a
17 number of things over the years. We've traded for RVs, we've
18 traded for cars and trucks, things like that, anything that has
19 value, collateral value.

20 Q When you say 'you've traded', what do you mean by that?

21 A We accept -- just say that we have a customer that has an
22 older home. We would establish a value for that home, and we
23 would allow them X amount of value for that home as a down
24 payment against the selling price of a new home.

25 Q Does CMH Homes ordinarily require a down payment --

1 A Yes, sir.

2 Q -- from its customers?

3 A Yes, sir.

4 Q For what reason?

5 A It just further protects the loan. The down payment is
6 just an investment by the customer to insure that, one, they're
7 serious about buying the home and they're committed to that,
8 and it's just the collateral value they put down against the
9 purchase price of the house.

10 Q And specifically with land-in-lieu transactions, how does
11 that work in terms of collateral?

12 A In a land-in-lieu situation, you have a customer that did
13 not have -- they may have cash. Some land-in-lieus have
14 partial cash and land. In a pure land-in-lieu where there was
15 no cash down payment, there would be a piece of property that
16 had a value that either the customer owned or someone else
17 might have owned that was willing to put that land up, and that
18 land would become the collateral for the down payment.

19 Q And is the land in lieu of a down payment?

20 A Yes, sir.

21 Q Is that where the terms comes from?

22 A Yes, sir, I think so.

23 Q And so how does the land serve as the collateral?

24 A The land has a value, and so that value is established as
25 the collateral value that the lender accepts as the down

1 payment.

2 Q Before 2006, could a customer pledge his or her own land
3 as collateral?

4 A Yes, sir.

5 Q And how is it done now?

6 A That is the way we do it today. Prior to 2006, we would
7 accept land that was not technically titled in the individual's
8 name. It could be -- we call it 'third-party land'. It could
9 be a relative, it could be a friend; someone that had land that
10 was willing to pledge that as the collateral. In 2006, our
11 lender required that the land be actually deeded to the
12 purchaser of the home, and so it required that if, say, a
13 grandfather wanted to provide an acre of land for the
14 homebuyer, then they would deed the land into the name of the
15 customer, prospective customer, and the customer would then put
16 that land up as the collateral value.

17 Q So what is the difference between a first-party land-in-
18 lieu and a third-party land-in-lieu?

19 A Okay. A first-party land-in-lieu, the actual homebuyer,
20 the customer is buying the home, the land is deeded in their
21 name and they're placing it up as collateral. A third-party,
22 the customer is buying the home and then there's a third-party
23 that's actually pledging land as the collateral.

24 Q And as you know, Mr. Booth, we are here in a repossession
25 action, correct?

1 A Yes, sir.

2 Q And in this transaction, who were the customers?

3 A Mr. Flores and Mr. King.

4 Q And were they the landowners?

5 A No, sir.

6 Q Who were the landowners?

7 A Mr. and Mrs. Trevino.

8 Q And what kind of transaction did CMH consider this to be?

9 A A land-in-lieu transaction.

10 Q Why?

11 A Because there was no cash down payment. The land was
12 pledged as the collateral down payment on the loan.

13 Q And does the file reflect that this was a third-party
14 land-in-lieu transaction?

15 A Yes, sir.

16 Q In what respect?

17 A There was a warranty deed supplied that had the legal
18 description of the land. What I saw in the deal is there was
19 an appraisal charged. Everything about the loan was it was a
20 land-in-lieu transaction. There was no cash down payment.

21 Q Is the documentation in the file consistent with a land-
22 in-lieu transaction?

23 A Yes, sir.

24 Q Are there many references to land-in-lieu transaction in
25 this case?

1 A Yes, sir --

2 Q In this file?

3 A -- I believe so.

4 **MR. RANGEL:** Call up CP Exhibit 1.

5 **(The exhibit is displayed)**

6 **BY MR. RANGEL:**

7 Q Mr. Booth, is this the real estate -- the retail
8 installment contract that was signed by Mr. Flores and
9 Mr. King?

10 A Yes, sir.

11 Q In the contract, does it show that Mr. Flores and Mr. King
12 are the customers?

13 A Yes, sir.

14 Q And you'll note that buyers' names are in the order of
15 Cesar Flores and Alvin King. Any particular reason they are in
16 that order?

17 A Normally it just meant that one signed on the credit
18 application first. That's normally how it would be
19 established.

20 **MR. RANGEL:** And we'll turn to the signature page. I
21 believe it's page four.

22 **(The page is displayed)**

23 **BY MR. RANGEL:**

24 Q And is that the order in which they signed?

25 A Yes, sir.

1 Q And if you look to the left of that page, you see 'Clayton
2 Homes, Inc.' written in, and then 'Clayton, Corpus Christi'.
3 Do you see that?

4 A Yes, sir.

5 Q And what is Clayton, Corpus Christi?

6 A Clayton, Corpus Christi is just the retail store that was
7 here in Corpus Christi.

8 Q Is that the same as CMH Homes?

9 A Yes, sir.

10 Q And does the retail installment contract reflect that
11 Mr. Flores and Mr. King financed the purchase of the mobile
12 home?

13 A Yes, sir.

14 Q Where is that reflected? Is that on page one?

15 A Yes, sir, I believe it is. It shows that there were 144
16 payments of \$511.40, and the payments were to begin in March of
17 2002.

18 Q Does the retail installment contract reflect that there
19 was a down payment?

20 **(Pause - Witness reviews contract)**

21 A No, there was no cash down payment.

22 Q And if there had been a down payment, it would have been
23 reflected as a cash down payment?

24 A Yes, sir.

25 Q Okay. Now, what security is shown in the contract?

1 A That there was real property located at 3534 Galimore
2 (phonetic), Alice, Texas.

3 Q And what about the box above that?

4 A The home itself, we also had a security interest in that
5 of course.

6 Q Two different security interests?

7 A Yes, sir.

8 Q Two different types of collateral?

9 A Correct.

10 Q Now, are there two different roles for CMH Homes and
11 Vanderbilt with respect to a transaction like the one that
12 Mr. King and Mr. Flores were involved in?

13 A Yes, sir.

14 Q And what are those roles?

15 A CMH Homes, we were the retailer, the dealer selling and
16 home and installing the home. We submitted a credit
17 application to Vanderbilt Mortgage in this case. They were the
18 lender. They reviewed that and they made the credit decision.
19 They informed us of the credit decision, under which conditions
20 the loan would be financed, and then our job would have been to
21 get all of that together, to package that up and submit it to
22 them for final approval. And at such time as they approved the
23 loan, then it would be assigned to them and they would pay us
24 in full for the transaction.

25 Q And is that what happened here?

1 A Yes, sir.

2 Q Now, how does CMH Homes protect itself after it installs
3 the home but before the loan is approved? What does it file?

4 A Well first we have them sign the retail installment
5 contract to make sure we have the security interest in the
6 home. Then in addition to that, in Texas we had a mechanic's
7 lien that was executed by the Trevinos, and so both those
8 documents were completed, and that protected us during the
9 installation process, any improvements that we might have been
10 doing in a particular contract and until such time as we
11 assigned it to Vanderbilt Mortgage.

12 Q Was this contract assigned to Vanderbilt Mortgage?

13 A Yes, sir.

14 Q Does the contract contain language of assignment?

15 A Yes, sir.

16 Q And what is that document that you said CMH Homes files to
17 protect itself before the loan is approved?

18 A It's the builder's mechanic's lien.

19 **MR. RANGEL:** Call up CP Exhibit 2.

20 **(The exhibit is displayed)**

21 **BY MR. RANGEL:**

22 Q And is this the builder's and mechanic's lien contract
23 that was filed in connection with this transaction involving
24 Mr. King and Mr. Flores?

25 A Yes, sir.

1 Q And who were shown as the landowners in this transaction?

2 A Maria Trevino and Arturo Trevino.

3 Q Going back to the retail installment contract, at the very
4 top when it says 'Assignee is Vanderbilt Mortgage and Finance,
5 Inc.', what does that mean to you?

6 A That they were going to be assigned this contract,
7 assuming it met all of their conditions, that they would
8 service this -- I mean they would own this loan, they would
9 become responsible for it, and they would collect the payments
10 from the borrower.

11 Q And when you say 'they', whom do you mean?

12 A Vanderbilt Mortgage.

13 Q And does the opening paragraph also contain language to
14 that effect?

15 A Yes, sir, it does.

16 Q The second sentence?

17 A 'Seller will submit this contract to Vanderbilt
18 Mortgage and, if approved, the contract will be assigned to
19 Vanderbilt Mortgage and Finance.'

20 Q And is that what happened here?

21 A Yes, sir.

22 Q Was the contract assigned to Vanderbilt?

23 A Yes, it was.

24 Q And we'll look at page five.

25 (The page is displayed)

1 Q What is the language under 'assignment by seller'?

2 MR. RUMLEY: I'm going to object, your Honor. The
3 document speaks for itself.

4 BY MR. RANGEL:

5 Q Is there additional language in the contract, additional
6 assignment language?

7 A Yes, sir.

8 Q Where is that language?

9 A There at the bottom of that contract.

10 MR. RANGEL: And I would ask that it be highlighted.

11 (The area is highlighted)

12 THE WITNESS: 'We assigned all our rights and title
13 and interest to Vanderbilt Mortgage.'

14 MR. RANGEL: Call up CP Exhibit 45.

15 (The exhibit is displayed)

16 BY MR. RANGEL:

17 Q What is this?

18 A Sir, these are -- appear to be just accounting entries
19 that were made at the time the deal was funded, where all of
20 the information was booked into the various accounts and the
21 retail company once we were funded by Vanderbilt Mortgage.

22 Q And were you in fact funded by Vanderbilt Mortgage?

23 A Yes, sir.

24 Q And did that happen on January 16th, 2002?

25 A Yes, sir, I believe so.

1 Q And what do you mean that CMH Homes was 'funded by
2 Vanderbilt' on that date?

3 A We assigned the loan to them, and at that point in time
4 they paid us in full.

5 Q When you say 'they paid you in full', what do you mean by
6 that?

7 A I mean we were paid the total amount of what we had sold
8 the home for.

9 Q And you were paid by whom?

10 A By Vanderbilt Mortgage.

11 Q And were you paid \$40,815.19?

12 A Yes, sir, that's what this says.

13 Q And did that in any way affect the underlying indebtedness
14 by Mr. King and Mr. Trevino to Vanderbilt?

15 A I think that's -- it was their obligation to Vanderbilt
16 Mortgage to repay that amount of money they had agreed to.

17 Q So the payment by Vanderbilt to CMH Homes, was that for
18 the assignment?

19 A Yes, sir.

20 Q Did that assignment mean that Mr. King and Mr. Flores
21 would no longer have to pay the debt to Vanderbilt?

22 A No, sir.

23 Q What --

24 A I mean their responsibility was Vanderbilt. We had
25 assigned all of our interest in the retail installment contract

1 to Vanderbilt.

2 Q So --

3 A Vanderbilt paid us in full.

4 Q But at that point, had Mr. King and Mr. Flores paid their
5 indebtedness in full?

6 A No, sir. They probably had not paid anything at that
7 time.

8 Q Under the contract -- I mean under the contract, the first
9 payment was going to be due in March of 2002, correct?

10 A Yes, sir.

11 Q But Vanderbilt paid CMH Homes in January of 2002?

12 A Yes, sir.

13 **MR. RUMLEY:** Objection, leading.

14 **THE COURT:** Sustained.

15 **BY MR. RANGEL:**

16 Q What -- After CMH Homes is paid by Vanderbilt and the
17 contract is assigned to Vanderbilt, what is -- what role does
18 CMH Homes have with respect to that transaction?

19 A As far as the financed transaction, Vanderbilt takes over
20 at that point and their relationship with the customer as far
21 as the payments. We would still have service, warranty
22 obligations to the customer as far as taking care of the home,
23 making sure the home performed, answer any questions they had
24 with that. That would have been our ongoing relationship with
25 this customer.

1 Q Does CMH Homes occasionally help Vanderbilt with
2 collections?

3 A Yes, sir.

4 Q Why?

5 A At that time in 2002/2003, we had a relationship with
6 Vanderbilt where we called it 'recourse financing' where we
7 agreed to -- if the home should ever become a repossession that
8 we would take the home and resell it, and so we had that
9 obligation. But even more importantly than that, we had a
10 relationship with this customer. We had sold the home, we knew
11 them and had met them at the store. We would have known where
12 the home was located because we knew where it was delivered,
13 and so from time to time, if -- and it wasn't very frequent but
14 it did happen where if a collector could not locate a customer
15 or could not make contact with a customer, they would notify
16 our sales center. Our sales centers were instructed to try and
17 locate the customer, find the customer and get them on the
18 phone with Vanderbilt Mortgage.

19 Q At that point, I mean did that in a way change the fact
20 that the indebtedness was owed to Vanderbilt?

21 A No, sir.

22 Q Was this something that happened after the contract had
23 been assigned to Vanderbilt?

24 A Yes, sir, correct.

25 Q Mr. Booth, there has been a lot of evidence regarding

1 sales center 214 in Corpus Christi. Have you heard that?

2 A Yes, sir.

3 Q What was sales center 214?

4 A Sales center 214 was simply our retail home center. I
5 call it home center -- lot, store -- that was located here in
6 Corpus Christi.

7 Q And was there a time when you learned of problems at sales
8 center 214?

9 A Yes, sir.

10 Q When was that?

11 A Late spring 2004, I guess, May/June of 2004.

12 Q And what was your understanding of those problems?

13 A There were a number of allegations primarily that revolved
14 around notary practices and some of the administrative
15 procedures there at the sales center.

16 Q Prior to that, had you or to your knowledge anybody at
17 corporate management, were they aware of these sloppy notary
18 practices?

19 A No, sir, we were not aware of that here in Corpus Christi.

20 Q And who is John Wells?

21 A John Wells was the sales center manager here in Corpus
22 Christi.

23 Q Were his responsibilities limited to that sales center?

24 A Yes, sir. I mean he was -- that was the only place he had
25 responsibility.

1 Q Did he have any responsibility in the management of CMH
2 Homes or --

3 A No, sir, just -- he was directly responsible for the store
4 here in Corpus Christi.

5 Q Did he have any responsibilities in Tennessee?

6 A No, sir.

7 Q Could Mr. Wells make any decisions for CMH Homes outside
8 of the store center 214?

9 A No, sir.

10 Q In response to what you learned at that point of these
11 notary practices, was there any change in company policies and
12 procedures?

13 A Yes, sir, there were.

14 Q And what were some of those changes?

15 A Almost immediately -- Very soon after we learned of the
16 allegations and could sort of get some understanding of what
17 was alleged and what we were being told had happened, and we
18 immediately put out notary guidelines throughout the country.
19 We established what we thought were the best general notary
20 guidelines that we could assemble. Every state was different
21 as far as the guidelines, and so we put that out around the
22 first of July.

23 Q What year?

24 A That was in 2004.

25 Q And what was your general understanding of the problems as

1 it related to the notary practices and the land that had been
2 used as collateral in sales center 214?

3 A Our understanding at the time was that there was concern
4 about the notary practice and had it been notarized properly;
5 that the person that was pledging the land, whether or not they
6 had actually appeared before the notary or not and had it
7 executed.

8 Q So was your understanding that the problem was focused on
9 these land-in-lieu transactions involving land?

10 A Yes, sir. My recollection is that basically everything
11 centered around the land transactions.

12 Q So what was done to address the problem involving notary
13 practices and land that had been used as collateral in those
14 transactions out of sales center 214?

15 A Well, we immediately adjusted our notary practices as far
16 as the training for that. And I wrote a memo for that. We
17 also took steps to go to a third-party notary practice where we
18 would subject or try to make it work with a third-party notary
19 at the sales center. A number of the stores went to title
20 companies. Some used attorneys. But it was just to get a
21 third-party involved in the land closing process to insure that
22 it was valid and objective.

23 Q Did you have any discussions with Mr. Paul Nichols, the
24 president of Vanderbilt, with respect to the notary problems at
25 sales center 214?

1 A Yes, sir, that was some time later. We had begun to -- or
2 we had modified a number of different policies and practices
3 that we had put in place. At the same time, we still had the
4 concerns about the loans that had been done down here in Corpus
5 Christi as far as the land that was pledged in those
6 transactions. And so I met with Paul. Paul, of course, was at
7 Vanderbilt at the time. Vanderbilt, you know, owned the liens
8 and the obligations were to Vanderbilt. Of course, we had
9 ultimately some exposure in that ultimately we suffered some of
10 the loss at the time if a loan ever became a repossession.

11 Q What do you mean by that, Mr. Booth?

12 A Well, should a loan not perform, if for some reason the
13 customer was not able to pay for the home, then ultimately the
14 retail sales center would take possession of the home and do
15 whatever repairs needed to be done, and then we would resell
16 the house and thereby try to reduce some of the loss exposure
17 on that. And so we had that direct cost back to the sales
18 center. And so if we didn't have the land, then of course we
19 had less collateral value.

20 And so what Paul and I had discussed was that all of
21 the -- that I recall -- the controversy surrounding Corpus
22 Christi revolved around the land transactions, and in
23 particular the notary practices around the land transactions.

24 Q So what did you decide to do with respect to those land
25 transactions?

1 A We felt that one way to end that controversy and to deal
2 with that in the future was to simply release the liens on all
3 of the land that was involved in the land-in-lieu transactions
4 that we had done.

5 Q Was that at sales center 214?

6 A Yes, sir.

7 Q And did you -- did CMH Homes in fact file a release of the
8 lien on the land in those transactions?

9 A Yes, sir, we did.

10 MR. RANGEL: Okay. Pull up CP Exhibit 13.

11 (The exhibit is displayed)

12 BY MR. RANGEL:

13 Q Is this the mechanic's lien release that was filed in
14 connection with the land that was pledged as security in the
15 transactions involving Mr. King and Mr. Flores?

16 A Yes, sir.

17 Q Looking to the left top, do you see that reference?

18 A Yes, sir.

19 Q Six four six three oh seven?

20 A Yes, sir.

21 Q What is that?

22 A In the retail company, we would have referred to that as
23 the customer number that was established at the time the
24 transaction began. Vanderbilt probably would call it an
25 account number, but they were one and the same. It just cross-

1 referenced the customer to an account number that was
2 maintained such that everything was filed with that deal --
3 everything that pertained to that file was filed under that
4 number.

5 Q At the time that you and CMH Homes decided to file a
6 mechanic's lien release and when you filed it, did you in any
7 way intend to release the underlying indebtedness owed by
8 Mr. Flores or Mr. King?

9 A No, sir.

10 Q And does the fact that you had a tracking number up there
11 mean anything with respect to what your intent was and what you
12 were releasing?

13 A No, sir. The intent was strictly to release the land.
14 That's all we ever discussed. That's what the decision was.
15 And the tracking number was just to make sure that this release
16 got back to that file.

17 Q In fact, if you look in the body of the mechanic's lien
18 release, are the names of Mr. Flores or Mr. King mentioned?

19 A No, sir, not at all.

20 Q What names are mentioned?

21 A Maria M. Trevino and Arturo Trevino.

22 Q And who were they in connection with this transaction?

23 A They were the property owners.

24 Q And in the body of the release, is there any reference to
25 the retail installment contract that was signed by Mr. King and

1 Mr. Flores?

2 A No, sir.

3 Q What contract is referenced?

4 A The mechanic's lien contract that was signed.

5 Q And was the mechanic's lien contract signed by Mr. King or
6 Mr. Flores?

7 A No, sir.

8 Q Was it signed -- Are the names that appear on the
9 mechanic's lien contract those of Mr. and Mrs. Trevino?

10 A Yes, sir.

11 Q And their signatures are on that document?

12 A Yes, sir.

13 Q The mechanic's lien release has a reference to 'has been
14 paid in full'. Do you see that?

15 A Yes, sir, I do.

16 Q What did you mean by that by including it in the release?

17 A I believe that it means that CMH Homes, our retail
18 company, had been paid in full by Vanderbilt Mortgage.

19 Q Did it mean that it had been paid in full by Mr. King and
20 Mr. Flores?

21 A No, sir.

22 Q Now just to be clear, what was the intent in preparing and
23 filing this mechanic's lien release?

24 A Our discussion, from the moment that we began to move this
25 way, was simply that we would release the liens on all of the

1 land involved in these transactions in Corpus Christi.

2 Q And only the lien on the land?

3 A Only the lien on the land.

4 Q Was that the only intent in what you were releasing?

5 A Yes, sir.

6 Q At any time, did you have any intent to release the
7 indebtedness owed by Mr. King or Mr. Flores?

8 A No, sir.

9 MR. RUMLEY: Objection, leading, your Honor.

10 MR. RANGEL: I don't think that's leading.

11 THE COURT: Sustained.

12 BY MR. RANGEL:

13 Q What intent, if any, did CMH Homes or you have in
14 connection with the indebtedness of Mr. King and Mr. Flores?

15 A We had -- At that point we had no involvement with that.

16 Q What do you mean by that?

17 A I mean Vanderbilt owned the loan itself. I mean the
18 responsibility that the customers had was to Vanderbilt, it was
19 not to the retail company.

20 Q So CMH Homes released an indebtedness that was owed to
21 Vanderbilt?

22 A No, sir.

23 MR. RUMLEY: Objection, leading.

24 MR. RANGEL: Judge, that is not leading. I'm just
25 asking a question that --

1 **THE COURT:** Overruled.

2 **BY MR. RANGEL:**

3 Q And why would releasing the land in those land-in-lieu
4 transactions make sense in light of the problem that had been
5 identified at sales center 214?

6 A We absolutely believed at that time that that was the
7 right thing to do; that the controversy had begun surrounding
8 those land transactions. There was no way at that time that we
9 could unwind all of that and figure out for sure what had
10 happened. The parties that had been involved on our end were
11 gone; they were no longer with the company. And we felt like
12 the fairest thing to do was to release that land, and that
13 would end the controversy for the future.

14 Q Would the builder's and mechanic's lien release negatively
15 impact CMH Homes?

16 A Yes, sir.

17 Q Would it negatively impact Vanderbilt?

18 A Yes, sir.

19 Q In what respect?

20 A Well, I mean, that collateral was given up. That interest
21 in that collateral that had been pledged was given up.

22 Q And was that -- Was that release focused on the land in
23 all the land-in-lieu transactions at sales center 214?

24 A That was my understanding, that it involved all of the
25 land-in-lieu transactions.

1 Q Going forward, I mean those builder's and mechanic's lien
2 releases, would they affect the sales center profitability in
3 the future?

4 A Yes, sir, they could have.

5 Q How?

6 A Well, we would not have been able to recover that land in
7 the case of a repossession. We would have surrendered any
8 right we would have had to that land or Vanderbilt would have
9 had to it, so there would have been no recovery on the land,
10 and so we would not have faired as well in a repossession.

11 Q Was the property description that was contained in the
12 builder's and mechanic's lien release the same property
13 description that was in that warranty deed that was faxed to
14 the sales center back on January 3rd, 2002?

15 A Yes, sir, it was the same.

16 Q Why does the sales center in a land-in-lieu transaction
17 need a property description?

18 A You have to have the legal property description in order
19 to file the liens ultimately against that property.

20 **MR. RANGEL:** In fact, if we could pull up CP 3,
21 Exhibit 13, and the HME fax; CP 3, CP 3, 76 and 41, please.

22 **(The exhibits are displayed)**

23 **BY MR. RANGEL:**

24 Q On the left, Mr. Booth, is there a property description,
25 and that's the warranty deed that -- on the left?

1 A Yes, sir, I see that.

2 Q That's the property -- is that the property description
3 that was in the deed that was faxed to CMH Homes on January
4 3rd, 2002, by Mr. King?

5 A Yes, sir.

6 Q Notice the spelling of the last word. Does there appear
7 to be a misspelling there?

8 A I've never seen that word before, so it could well have
9 been, yes, sir.

10 Q Well, let's look at the property description that was in
11 the builder's and mechanic's lien release. Is that the same
12 property description?

13 A Yes, sir.

14 Q When a customer provides a property description to the
15 sales center, is that property description used to place the
16 mobile home where it's going to be placed?

17 A No, sir; you'd have to have the physical address of where
18 the home is going. I mean as far as where you're going to
19 deliver the home to, it wouldn't necessarily be the -- I don't
20 know that you could use the legal property description to find
21 it without going down to the courthouse and researching that
22 property.

23 Q So from a practical standpoint, after a mobile home is
24 sold and is going to be located and delivered somewhere, is the
25 information that is given to the contractor who is going to

1 deliver it the legal description or is it the address?

2 A No, sir, it's going to be the address.

3 Q Does that make sense?

4 A And probably a map how to get there.

5 Q Does it make practical sense to give a legal description
6 to the person or contractor who is going to locate or deliver
7 the mobile home?

8 A No, sir. I think this would be the only time it would be
9 used on these documents.

10 Q And this release, the builder's and mechanic's lien
11 release that was filed with respect to the transaction
12 involving Mr. King and Mr. Flores, where was it filed?

13 A It would have been filed there in the local county where
14 the home was located.

15 Q Was it filed in the public record?

16 A Yes, sir. My understanding is that is the public record.

17 Q And if something is filed in the public record, does that
18 mean it's being filed in secret?

19 A No, sir. I think the definition of the public record is
20 it would be available to the public.

21 Q Is anything -- As far as you know, anything that's filed
22 in the public record at the courthouse, is that public
23 information?

24 A That's my understanding, yes, sir.

25 Q The builder's and mechanic's lien release, was it sent to

1 the customer or the landowner?

2 A No, sir, it was not.

3 Q Why?

4 A My understanding is that the process at Vanderbilt -- and
5 Vanderbilt processed the releases -- when Paul and I met with
6 Tom Hodges, the corporate counsel, and we made the decision to
7 release the liens on the land. At that point then they carried
8 it out through our normal department that handled the partial
9 collateral releases on a standard basis. And I think they
10 processed them the same way they normally did.

11 Q The builder's and mechanic's lien contract that was filed
12 when the transaction was completed in January of 2002, was that
13 the builder's and mechanic's lien that you released in October
14 of 2005?

15 A Yes, sir.

16 Q Why was it not released earlier?

17 A Sir, I don't know why it wasn't released earlier. I guess
18 it could have been. Right after we were -- when we were paid
19 in full by Vanderbilt and they funded the loan for us, I guess
20 that could have been released then, but I think it was the
21 process at Vanderbilt that they simply -- they held that and
22 released it at the same time they did the deed of trust when
23 the customer had paid for the home.

24 Q How, for example, when you have a first-party land-in-lieu
25 transaction as opposed to a third-party, how is the timing

1 affected by that in terms of the filing of any release?

2 A With respect to a first-party?

3 Q Yes. When is a release filed in a first-party land-in-
4 lieu transaction?

5 A When is the release filed is when the customer totally
6 paid for the home. When the indebtedness has been repaid, then
7 it would be filed, I guess sent to the customer with the
8 contract, retail installment contract, everything marked
9 'paid'.

10 Q Is that -- That didn't happen here, right?

11 A No, sir.

12 Q Insofar as you know, have Mr. King and Mr. Flores paid in
13 full the contract or the indebtedness?

14 A My understanding is it had not been paid in full.

15 Q And just to be clear, what was your intent and the intent
16 of CMH Homes when it filed the builder's and mechanic's lien
17 release?

18 A Our intent was to release the land in these transactions
19 and release those liens. And that's what Paul and I discussed,
20 to simply release the liens on all of the land.

21 Q Did you ever have any intent to release the indebtedness
22 of Mr. King or Mr. Flores?

23 A No, sir.

24 **MR. RANGEL:** Pass the witness, your Honor.

25 **THE COURT:** Thank you. Mr. Rumley?

1 **MR. RUMLEY:** Good morning, Mr. Booth.

2 **THE WITNESS:** Good morning.

3 **CROSS EXAMINATION**

4 **BY MR. RUMLEY:**

5 Q How are you, sir?

6 A Fine, sir.

7 Q You and I have met on a number of occasions, have we not?

8 A Yes, sir, we have.

9 Q I've taken your deposition two times?

10 A Yes, sir.

11 Q And you understand that when I took your deposition, you
12 were under oath to tell the truth?

13 A Yes, sir.

14 Q And just like the oath that you're here today, you swore
15 to tell the truth when you gave the depositions, right?

16 A Yes, sir.

17 Q And during the time that I took your depositions, I asked
18 you that if you didn't understand my question for any reason to
19 let me know, right?

20 A Yes, sir.

21 Q You and I made that agreement, correct?

22 A Yes, sir.

23 Q And that way -- And remember I told you that if you answer
24 a question, that both me and the jury are going to believe that
25 you're telling the truth, right?

1 A Yes, sir.

2 Q And you stand by the testimony you gave in your
3 depositions, correct?

4 A Yes, sir.

5 Q I wanted to ask you about the releases that Mr. Rangel
6 just asked you about, Exhibit Number 11, Defendants' Exhibit
7 Number 11. Now, this is the release that you just talked
8 about, right?

9 A Yes, sir.

10 Q Now, when I took your deposition a few months ago, you
11 understand, sir, that I took your deposition as the corporate
12 representative for this company, right?

13 A That was my understanding, yes, sir.

14 Q And you understand that obviously you can't -- someone
15 can't ask a corporation questions and so we submit a subject,
16 and then the corporation submits the individual who can best
17 respond to that subject, true?

18 A Yes, sir.

19 Q And you were selected on behalf of Clayton Homes, CMH, to
20 speak to the issue as to why you decided -- 'you' being CMH --
21 filed hundreds of releases in South Texas, correct?

22 A Yes, sir.

23 Q And isn't it true, Mr. Booth, that after you give a
24 deposition, the court reporter types it all up and then you get
25 a chance to review it, right?

1 A Yes, sir.

2 Q And if you're reading something and it just -- maybe the
3 court reporter got it wrong or maybe you just didn't understand
4 it, you have an opportunity to correct the deposition, true?

5 A Yes, sir.

6 Q And you did that, right? You read through the deposition?

7 A Yes, sir, I did read it.

8 Q And if you saw anything that was inaccurate, you corrected
9 it, right?

10 A I think I did try to correct a few things that I saw.

11 Q And you did it in your -- it's called a 'rap sheet',
12 right?

13 A I don't know what it's called, but I remember reviewing
14 it.

15 Q Isn't it true, sir, that the testimony you gave was that
16 when you filed these releases -- 'you' being CMH -- that it was
17 the decision to release the loan --

18 A No, sir.

19 Q -- and not the land?

20 A No, sir, I don't --

21 **MR. RANGEL:** May we approach, your Honor? May we
22 approach?

23 **THE COURT:** Yes.

24 **(Bench conference begins at 10:46 a.m.)**

25 **MR. RANGEL:** Judge, this is very serious. He's about

1 to try to impeach him with what is in the written deposition
2 where the word 'loan', the audio clearly says 'land'.
3 Something happened, and I'm not accusing anybody of anything,
4 but if we're interested in the truth here, which I'm sure we
5 are.

6 **THE COURT:** Did he sign the deposition?

7 **MR. RUMLEY:** Yes.

8 **MR. RANGEL:** He signed the letter, but the --

9 **THE COURT:** Did he correct it?

10 **MR. RUMLEY:** No, he just --

11 **MR. RANGEL:** He just went --

12 **THE COURT:** He had an opportunity to correct it
13 though.

14 **MR. RANGEL:** But your Honor, the audio --

15 **MR. RUMLEY:** Your Honor, that's not what he said.

16 **THE COURT:** I'm sorry, he corrected it -- he had an
17 opportunity to correct it and he signed it.

18 **MR. RANGEL:** Judge, the audio is clear. Can I play
19 that?

20 **THE COURT:** You may play that in your redirect.

21 **MR. RANGEL:** I want to do that.

22 **THE COURT:** That is fair, okay?

23 **MR. RANGEL:** That's fair, because I want the jury to
24 hear that.

25 **THE COURT:** Okay.

1 **(Bench conference concludes at 10:47 a.m.)**

2 **BY MR. RUMLEY:**

3 Q All right, sir. Do you remember when I took your
4 deposition, you said: 'The decision to release the loan',
5 correct?

6 A No, sir. I don't think I've ever said that. If I did, I
7 misspoke. But I've always known it was the release of the
8 land.

9 Q If we look, Mr. Booth, at page nine, it says, all right, I
10 asked you:

11 'QUESTION: Are you here on behalf of the corporation
12 with respect to the lien releases that were filed in
13 the fall of 2005 related to store 214?'

14 And what was your answer?

15 'ANSWER: Yes, sir. The decision to release' -- that
16 says 'the loan'.

17 Q And that was your testimony, right?

18 A I don't believe so, sir.

19 Q Well, when you read the deposition, after you got a chance
20 and it was typed up, after you read it, did you see that? Did
21 you read that line?

22 A I don't remember if I read that specifically, but I don't
23 believe I would have said that.

24 Q Well, you understand that you had a chance to correct it,
25 right, if it's wrong?

1 A I understand that, Mr. Rumley.

2 Q And you heard the lawyers asking Mr. King and Mr. Flores
3 all kinds of questions about the fine print in the contract.
4 You signed it, you read it, that's your -- that's what you say,
5 right? You heard all those questions?

6 A I heard those questions, yes, sir.

7 Q I mean all this fine print in the contract, if it's in
8 there and you sign it, then you're obligated for it. You heard
9 them saying that, right?

10 A Yes, sir.

11 Q And the same should be true for you, right?

12 A If I sign a contract, yes, sir.

13 Q Or if you give testimony under oath and the testimony --
14 the typed transcript says 'loan' and you sign your deposition,
15 you're swearing to the truth, right?

16 A I believed it to be accurate. I don't think it was,
17 today.

18 Q Then why didn't you change it?

19 A I didn't catch it.

20 Q Certainly -- certainly, sir, if what you said in your
21 deposition, 'the decision to release the loan', then we
22 wouldn't be here today, would we?

23 A Sir, repeat that question, please.

24 Q Yeah. If you were truthful in your deposition when you
25 said 'the decision to release the loan', then we wouldn't be

1 here today, would we?

2 A I was truthful in my deposition.

3 Q I understand. When you said: 'If the loan was released or
4 discharged', we wouldn't be here today, would we?

5 A I don't know, but I mean that was not the decision. That
6 was never the decision, to release the loans. It was always
7 about the land.

8 Q Do you remember, and going to Exhibit Number 11, you and I
9 discussed this language -- you understand that we discussed
10 this language at length, 'has been paid in full', correct?

11 A Yes, sir.

12 Q And I think you just told the jury that you believe the
13 language 'paid in full' was in there because CMH was paid in
14 full by Vanderbilt.

15 A Yes, sir.

16 Q Is that what you told the jury?

17 A I believe that today, yes, sir.

18 Q Today?

19 A Today.

20 Q Why qualify your answer? Because you know you said it
21 differently during your deposition?

22 A I think during my depositions I wasn't sure. I didn't
23 know what it meant.

24 Q But you understand you were testifying for CMH at the time
25 of your deposition, right?

1 A Yes, sir.

2 Q On the subject of this release, what this release means,
3 right?

4 A Yes, sir.

5 Q And you told me in deposition:

6 'I don't know. I don't know what 'paid in full'
7 means', right?

8 **MR. RANGEL:** Judge, if he's going to impeach
9 Mr. Booth, he needs to confront him just like I was yesterday
10 trying to do with a specific page and line that he is referring
11 to.

12 **THE COURT:** Overruled.

13 **BY MR. RUMLEY:**

14 Q And Mr. Booth, you read your deposition obviously before
15 today?

16 A Yes, sir.

17 Q You knew last night that you were going on the stand,
18 right?

19 A Yes, sir.

20 Q And I assume last night you probably went through your
21 deposition a couple of times?

22 A No, I did not last night, but --

23 Q But you've read it?

24 A -- I have read it, yes, sir.

25 Q Okay. And just so we're clear that what your lawyers

1 mentioned during the time when you gave your deposition, you
2 told me that you don't know why 'paid in full' was included in
3 the release.

4 A And that was true.

5 Q And I asked you what could possibly have been paid in
6 full? And your official answer on behalf of this company was
7 what?

8 A I don't remember now, sir, specifically. I don't think I
9 knew.

10 Q Your answer was: 'I don't know', right?

11 A Right.

12 Q How could the president of CMH not know what the language
13 is intended to mean in releases that were filed, hundreds in
14 South Texas? How could you not know that?

15 A Sir, I didn't know.

16 Q Well, you yourself, Mr. Booth, actually signed a number of
17 these releases that were filed in South Texas, correct?

18 A Sir, I don't remember how many I signed, but it was very
19 few.

20 Q But you signed releases like this Exhibit Number 11. The
21 release that was filed with respect to this case, you filed a
22 bunch of them, right?

23 A Sir, there were a number of those filed. I think I signed
24 one. I don't recall how many I signed but it was very, very
25 few.

1 Q Do you remember going through them in your deposition?

2 A I remember we talked about one, yes, sir.

3 MR. RUMLEY: Your Honor, we would offer Defendants'
4 Exhibit 92.

5 MR. RANGEL: Your Honor, may we approach? We object.

6 THE COURT: Yes.

7 (Bench conference begins at 10:53 a.m.)

8 MR. RUMLEY: These are the mechanic's lien releases
9 that David Booth himself signed and they're being offered
10 because he says that he signed them under oath. They're
11 notarized and he swore to the truth of it, and so it's -- he
12 swore to the truth of the language of 'paid in full'.

13 MR. RANGEL: Judge, this violating the motion in
14 limine in terms of other parties, other transactions.

15 MR. RUMLEY: It's all related to store 214.

16 MR. SLEDGE: This is motion in limine three.

17 THE COURT: Are these for 214?

18 MR. RUMLEY: Yes.

19 MR. SLEDGE: This is related to motion in limine
20 number three, other transactions as disputes. The only purpose
21 for which he's trying to offer this evidence is propensity
22 evidence. It has no probative value with respect to the
23 transaction that we're here about.

24 THE COURT: This is your witness and only you can do
25 the objections.

1 **MR. RANGEL:** He's --

2 **THE COURT:** Overruled.

3 **(Bench conference concludes at 10:54 a.m.)**

4 **BY MR. RUMLEY:**

5 Q All right, Mr. Booth. As president of a big company, I
6 assume that before you sign a document that you make sure you
7 fully understand the document, right?

8 A I do my best to understand it, yes, sir.

9 Q And by doing your best, you read it and, if you don't
10 understand it, you ask questions, right?

11 A True, yes, sir.

12 Q Let me show you -- going back to my original question, you
13 signed a number of the releases out of store 214 that were
14 filed in the fall of 2005, correct?

15 A Yes, sir.

16 Q Do you know how many?

17 A No, sir.

18 Q I have 19. Does that sound about right?

19 A Sir, I don't recall how many I signed. I really don't.

20 Q Well, let's look at the first one.

21 **MR. RANGEL:** Judge, I would object to these on the
22 grounds that any probative value regarding these transactions
23 is outweighed by a prejudicial affect.

24 **THE COURT:** Thank you. Overruled.

25 //

1 **BY MR. RUMLEY:**

2 Q All right, Mr. Booth. Builder's and mechanic's lien
3 contract release; this is the same release that was filed --

4 **THE COURT:** I'm sorry, have you offered these for
5 admission?

6 **MR. RUMLEY:** Yes. This is what we were up --

7 **THE COURT:** No, you didn't.

8 **MR. RUMLEY:** We offer Defendants' 92. This is what
9 we would offer.

10 **MR. RANGEL:** And for the record, we would object,
11 your Honor, on the grounds that any probative value --

12 **THE COURT:** Exhibit 92 is admitted. You have the
13 same exact -- Did you want to offer -- How many of these do you
14 want to offer?

15 **MR. RUMLEY:** The entire Exhibit 92.

16 **THE COURT:** What are the numbers? Or is it all one
17 exhibit?

18 **MR. RUMLEY:** It's all one Exhibit 92, your Honor.

19 **THE COURT:** Okay, 92 is admitted.

20 **(Defendants' Exhibit Number 92 was received in evidence)**

21 **BY MR. RUMLEY:**

22 Q All right, Mr. Booth, I want to ask you about a couple of
23 things. First, this appears to be the same language that's
24 included in the release that was filed with respect to this
25 case, right?

1 A Yes, sir, I believe so.

2 Q And one of the questions, and we're going to get to this
3 in a minute, you also work for Clayton Homes, Inc., right?

4 A Yes, sir.

5 Q You had mentioned I think to Mr. Rangel that you work for
6 CMH, but you also work for Clayton Homes, Inc., correct?

7 A I'm an officer of Clayton Homes, Inc.

8 Q And Clayton Homes, Inc. is, I think, a parent company,
9 right?

10 A Yes, sir.

11 Q They're up here, and then below them you have CMH
12 Manufacturing, you have CMH Retail, you have Vanderbilt, and
13 then you have whatever company buys insurance, correct?

14 A I think that's correct.

15 Q Okay. And as the parent company, Clayton Homes, Inc.
16 oversees all of the subsidiary companies, correct?

17 A Yes, sir.

18 Q And one of the things Clayton Homes does is, you can see
19 right here it says 'Clayton Homes, Inc.', right?

20 A Yes, sir.

21 Q And clearly you have authority to sign for Clayton Homes,
22 Inc.?

23 A Yes, sir.

24 Q All right. And it looks like with respect to these folks,
25 Guadalupe Barrera and Elma Barrera, you signed a release that

1 was filed, it looks like, in Jim Wells County, correct?

2 A The date on this is -- Is this the same date as the other
3 releases?

4 Q If you look here, it says September 14th, 2005.

5 A Okay.

6 Q Right?

7 A Yes, sir.

8 Q And that's about the time, it was the fall of 2005 is when
9 all these releases were filed, correct?

10 A It was in the fall, yes, sir.

11 Q Okay. And if we look right down here, we have a notary,
12 right? And you understand what a notary is?

13 A Yes, sir.

14 Q The notary swears that you signed the document, right?

15 A Yes, sir.

16 Q And then what this is saying is that Mr. Booth appeared
17 before the notary, right?

18 A Yes, sir.

19 Q And you understand that when you signed this, you did so
20 under oath?

21 A Yes, sir.

22 Q Right? Just like here today, right?

23 A Yes, sir.

24 Q And when you signed this document, you agree with me that
25 you're bound by the terms of the document, right?

1 A Yes, sir.

2 Q And right here it says that you're:

3 'A properly authorized officer acting under the
4 authority of the board of directors'.

5 Did I read that right?

6 A Yes, sir.

7 Q If we look at the releases that were filed in this matter,
8 Mr. Jordan, he is an officer of CMH, right?

9 A Correct, yes, sir.

10 Q And he's also an officer of Vanderbilt?

11 A Correct.

12 Q How can someone be an officer of both CMH and Vanderbilt?

13 A I think he's appointed that. He's corporate controller
14 and he's an assistant secretary of both companies.

15 Q There's no --

16 A Both subsidiaries.

17 Q There's no conflict?

18 A No, sir.

19 Q In fact, just so the jury understands, if you were to go
20 to Maryville, Tennessee, there's one building, right?

21 A It's one building, yes, sir.

22 Q And Vanderbilt is on the same floor as CMH?

23 A No, sir. Vanderbilt is on the bottom floor and CMH is
24 located up -- we have a small group there on the top floor.

25 Q Okay. Everyone's in the same building?

1 A Yes, sir; the folks that are in Maryville, Tennessee, yes,
2 sir.

3 Q All right. But as far as Vanderbilt, the company
4 Vanderbilt, their main office, the main office of CMH, you-all
5 are in the same building, right?

6 A Yes, sir.

7 Q If we look at this release, now I think what -- I think
8 what you told me and the jury is that your testimony is that --
9 now -- is that 'paid in full' means that CMH was paid in full
10 by Vanderbilt. Is that your testimony today?

11 A That's my understanding today, yes, sir.

12 Q From whom? How did you gain this knowledge from the time
13 I asked you in your deposition to today?

14 A In talking with Mr. Nichols and others in our company, I
15 understood that the assignment meant that we were paid in full
16 when the deal was funded. CMH loans had been paid in full.

17 Q If we look right here, Mr. Jordan -- and I assume
18 Mr. Jordan -- and we may hear from him in this case -- but is
19 he a truthful and honest person?

20 A Yes, sir.

21 Q And when he swore to this release, he says:

22 'CMH Homes is the true and lawful owner and holder of
23 that certain note and indebtedness'.

24 Did I read that right?

25 A Yes, sir, you did.

1 Q And the only note in the transaction is the installment
2 contract, correct?

3 A True, yes, sir.

4 Q And that note is referenced by this number, right?

5 A That retail installment contract?

6 Q Yes.

7 A Yes, sir.

8 Q I mean that's the --

9 A It's a part of that file, yes, sir.

10 Q That's the note we're talking about, right?

11 A That is the note, yes, sir.

12 Q Yeah. And so Mr. Jordan is swearing under oath that CMH
13 -- not VMF, CMH -- as of October 8th, 2005, is the lawful owner
14 and holder of the note and the indebtedness, right?

15 A That's not correct.

16 Q That's what it says, right?

17 A That's what it says.

18 Q And he signed it under oath, right?

19 A Yes, sir.

20 Q And this was filed in the county records?

21 A Yes, sir.

22 Q Since October 8th, 2005, has anybody filed a corrected --
23 we've heard about these corrected deeds. Has anybody corrected
24 that?

25 A It released the lien. There wouldn't have been any reason

1 to correct it.

2 Q Sir, it references the note in evidence, which is the
3 retail contract, right?

4 A That's what it says, yes, sir.

5 Q And so if the retail installment contract, the note, has
6 been released as paid in full, then we don't owe any more
7 money.

8 A It was never released -- The retail installment contract
9 was never released. That's not what that refers to.

10 Q How do you know?

11 A I just know that that was never the intent of the entire
12 transaction. And I know that the retail installment contract
13 was never released. I mean, the customer are still paying, or
14 were paying, for the home.

15 Q Well, let's talk about that.

16 A Okay.

17 Q You did not provide any of the customers with copies of
18 those releases, did you?

19 A No, sir.

20 Q No one did. Within Vanderbilt, Clayton Homes, Inc. or
21 CMH, no one provided the customers with copies of these
22 hundreds of releases, right?

23 A That's my understanding, sir.

24 Q Why not?

25 A I don't know, except that I -- what I understand is that

1 the procedure that the payout department follows is that if
2 it's a partial release of the collateral that they file that
3 with the retail installment contract until it's paid in full by
4 the customer.

5 Q Sir, are there procedures in place when you're file these
6 because you find out about all the notary irregularities as you
7 call them?

8 A No, sir.

9 Q Okay. So why -- Do you agree with me that you owe the
10 responsibility to your customer to be honest and truthful?

11 A I'm always honest and truthful with my customers.

12 Q Do you think your company should be?

13 A Yes, sir, I do.

14 Q All right. And you told the jury the reason why you filed
15 hundreds of releases is because, I think you said, it was the
16 right thing to do?

17 A And I believe it was the right thing to do.

18 Q If it was the right thing to do, why didn't you tell your
19 customers? Why didn't you send Mr. Herrera a copy of the
20 release and say, hey, look, here's the release? Why didn't you
21 send it to him?

22 A Sir, my understanding is they were filed in the public
23 record back in the county where they had been filed to begin
24 with. They were released there, and so therefore they were
25 released. The majority of the transactions were first-party

1 land-in-lieu transactions. The customer, the homeowner and the
2 property owner were one and the same. They were still
3 obligated under the retail installment contract, they were
4 making payments. And at such time as they paid for the home,
5 then they would have received the lien releases at that time.
6 That was the process that Vanderbilt followed.

7 Q Sir, why didn't you mail them a copy? Why wouldn't you
8 just mail them a copy? We're filing this release relating to
9 your land. Here's the release.

10 A That was not the procedure.

11 Q I mean you heard Ms. Russell this morning and yesterday
12 afternoon that you guys have all these different ways of
13 calling them, calling their employer, calling neighbors. Why
14 didn't anybody call these people and say, hey, we're filing
15 this mechanic's lien release, this deed of trust release?

16 A I don't know.

17 Q It's because you didn't want them to know, right?

18 A No, sir. That was never discussed, that we didn't want
19 anybody to know about it. Otherwise we wouldn't have filed it
20 in the public record. We wouldn't have released them if we
21 didn't want anybody to know it.

22 Q Why didn't you give them a copy?

23 A We just didn't.

24 Q The truth --

25 A That was not Vanderbilt's process.

1 Q The truth, sir, is the reason why you filed the mechanic's
2 lien release and the reason why you filed the deed of trust
3 release is because you uncovered that there was lots and lots
4 of notary fraud within store 214, correct?

5 A That is not the truth, what you just said, I don't
6 believe. Say it again.

7 Q The reason why you filed all these is because you
8 discovered that there was notary fraud in numbers of
9 transactions, right?

10 A We discovered that there were irregularities. There were
11 allegations regarding the notary practices at that sales
12 center. That was why we filed the land releases.

13 Q And you filed the releases because you wanted to protect
14 yourself from liability, true?

15 A No, sir. We filed them because we could not untangle the
16 mess. We didn't know who had signed. We didn't know which
17 customers. Like I say, the majority of the deals were the
18 homeowner and the landowner were the same. You know, in those
19 situations, it was very apparent that they had pledged the
20 land. In the third-party transactions, we weren't sure who had
21 signed, whether it had been notarized properly or not. And it
22 just seemed like the fairest thing to do was just simply
23 release the land and end the controversy.

24 Q Sir, you released the land to protect yourself from future
25 liability, correct?

1 A That's true.

2 Q And in an effort to protect yourself from liability, you
3 made a decision not to send a copy to either the customer or
4 the landowner, right?

5 A I did not make that decision.

6 Q You didn't make it --

7 A No, sir.

8 Q -- but someone did?

9 A I don't think the decision was not to send it. I think
10 the decision was just to handle the process the way we normally
11 handle partial releases.

12 Q You understand that the policy and procedure in place is
13 to send a copy of the deed of trust release and the builder's
14 and mechanic's lien release to the customer once it's recorded?
15 Do you understand that that's Vanderbilt's policy?

16 A That was not my understanding of the policy.

17 Q Have you read Mr. Barton's deposition?

18 A I have not read Mr. Barton's deposition.

19 Q Have you seen the Vanderbilt procedures that say they're
20 supposed to be sent to the customer?

21 A I did not see that in the procedures. The procedure I saw
22 was that if it was a partial release, it was filed back with
23 the retail installment contract until such time as it was paid
24 in full by the customer. And then the entire package was
25 stamped 'paid' and sent to the customer at that time. That's

1 what I read in the procedure manual.

2 Q Have you read the deposition of David Barton?

3 A No, sir, I did not.

4 Q And you don't work for Vanderbilt, right?

5 A No, sir, I do not.

6 Q He would know the procedures better than you?

7 A I think Mr. Barton would know the procedures better than
8 me, yes, sir.

9 Q All right, and how about Hugh Statum? Do you know
10 Mr. Statum?

11 A I know Mr. Statum.

12 Q And what's Mr. Statum's position?

13 A Mr. Statum works for CMH Homes, the retail company, as a
14 vice president of operations.

15 Q He works for you?

16 A Yes, sir.

17 Q Did you read his deposition?

18 A Some time ago, yes, sir.

19 Q If Mr. Statum testified that he believes the customers
20 should have received copies of these releases, do you agree or
21 disagree with him?

22 A He was testifying after the fact, correct? That he
23 believed that they should have received them?

24 Q Yes, sir. Do you agree -- If Hugh Statum testified that
25 the customers should have received these, you-all should have

1 sent them to them, do you agree with him or disagree with him?

2 A I think in hindsight, it would have been fine to have sent
3 it to them. I would not have objected if we had.

4 Q I want to talk to you briefly about lot 214. John Wells,
5 Mr. Wells was the store manager, right?

6 A Yes, sir.

7 Q Ben Frazier, you know Mr. Frazier, right?

8 A I don't remember Mr. Frazier. I know he was a salesperson
9 there at the sales center.

10 Q And he was not only the sales manager but he was a notary,
11 correct?

12 A Yes, sir.

13 Q And have you read his deposition?

14 A Yes, sir, I have.

15 Q You've read his deposition in this case?

16 A Yes, sir.

17 Q All right. And I assume that when people make allegations
18 of fraud and forgery against your company, that's something
19 that concerns you, right?

20 A Yes, sir.

21 Q And you understand that Mr. Frazier has testified that his
22 signature was forged on these documents, correct?

23 **MR. RANGEL:** Your Honor, may we approach? May we
24 approach?

25 **THE COURT:** Yes.

1 **(Bench conference begins at 11:11 a.m.)**

2 **MR. RANGEL:** Judge, Mr. Rumley --

3 **THE COURT:** Are you missing the motion and my order?

4 **MR. RUMLEY:** Yes.

5 **THE COURT:** That's not here.

6 **MR. RUMLEY:** I mean we get testimony --

7 **MR. RANGEL:** Mr. Frazier --

8 **MR. RUMLEY:** Wait a minute, let me finish.

9 **MR. RANGEL:** Mr. Frazier testified --

10 **MR. RUMLEY:** Let me finish, please.

11 **MR. RANGEL:** Excuse me. Number 37, granted. Any
12 question or comment to any trial witness about the competence
13 of any other witness, the credibility of the testimony or an
14 opinion as to the testimony, including deposition testimony, of
15 any other witness. Your Honor, that's very clear in your
16 motion in limine. You granted that. Mr. Rumley has --
17 Mr. Rumley has just gone way beyond without even affording us
18 and the Court the courtesy of approaching the bench.

19 **THE COURT:** Okay -- Your question was --

20 **MR. RUMLEY:** Mr. Frazier has testified that his
21 signature was forged on the deed of trust. I asked him --

22 **THE COURT:** But who signed it?

23 **MR. RUMLEY:** -- are you concerned -- Are you
24 concerned if there are allegations made, and he said yes. Did
25 you read his deposition? Yes. You understand that he has

1 testified that his signature is forged. It's not an opinion
2 about credibility. Frazier testified my signature is forged.
3 There's no question.

4 **MR. RANGEL:** Including deposition testimony, your
5 Honor.

6 **THE COURT:** All right, let me tell you, it is now
7 relevant, so he can testify.

8 **MR. RUMLEY:** Thank you.

9 **MR. RANGEL:** But Judge --

10 **THE COURT:** Go ahead. Wait.

11 **MR. RANGEL:** I understand the Court. My frustration,
12 Judge, is that we have tried -- I stayed within the Court's
13 motion in limine in examining Mr. Flores and Mr. King because I
14 respect the Court's order. But Mr. Rumley --

15 **MR. RUMLEY:** This doesn't even apply.

16 **MR. RANGEL:** It does apply, but I understand the
17 Court's ruling. I just, you know --

18 **THE COURT:** But I granted all the in liminies until
19 it became relevant --

20 **MR. RANGEL:** I know, but we took it --

21 **THE COURT:** -- and then we took it up --

22 **MR. RANGEL:** -- to approached the bench --

23 **THE COURT:** We've taken it up once.

24 **MR. RANGEL:** -- your Honor.

25 **THE COURT:** We have, and he should have done that,

1 but that --

2 **MR. RANGEL:** That's -- that -- that's my only --

3 **THE COURT:** -- you're exactly right.

4 **MR. RANGEL:** That's my only point.

5 **THE COURT:** And that's about three strikes on them
6 that have not -- they have not approached.

7 **MR. RANGEL:** That's my only point, you know --

8 **THE COURT:** And it's understood.

9 **MR. RANGEL:** -- I'm respecting the Court's ruling.

10 **THE COURT:** Do you suggest that I caution you further
11 or talk about intent or --

12 **MR. RANGEL:** Mr. Rumley is an officer of the Court,
13 your Honor, and I hesitate to ask --

14 **THE COURT:** You're all good lawyers.

15 **MR. RANGEL:** I know, but Mr. Rumley has ignored the
16 Court's motion in limine.

17 **MR. RUMLEY:** This is -- I'm -- you know, that's
18 absurd. I have not ignored anything, your Honor, and I take
19 offense to his statements.

20 **THE COURT:** Okay.

21 **MR. RUMLEY:** If you read that limine, it does --

22 **THE COURT:** I just ruled in your favor.

23 **MR. RUMLEY:** I know, but that --

24 **THE COURT:** What do I need to do?

25 **MR. RUMLEY:** -- makes me, you know, he's attacking me

1 personally now.

2 **MR. RANGEL:** I am not attacking --

3 **MR. RUMLEY:** And I think it's unfair.

4 **MR. RANGEL:** I am raising a point as --

5 **THE COURT:** All right, he's raised a point of law
6 that's very important. Now, go on to the -- and ask the
7 question. Thank you.

8 **MR. RANGEL:** And just to be sure so we won't come up,
9 he will be allowed to ask questions regarding the testimony of
10 -- deposition testimony of any other witness?

11 **THE COURT:** That he read.

12 **MR. RANGEL:** Okay; that he read. I think he's got to
13 lay the predicate.

14 **MR. RUMLEY:** He said he --

15 **THE COURT:** I think he said he read it.

16 **MR. RUMLEY:** For example --

17 **THE COURT:** And he's a notary for this guy, right?

18 **MR. RUMLEY:** No, I understand, but Mr. Statum and
19 others where he said he hadn't read it, your Honor.

20 **MR. RANGEL:** I'm not arguing with the Court.

21 **THE COURT:** This is difficult for me too. For you-
22 all, this is a very difficult case. You know, sometimes only
23 the very -- most difficult cases go to trial. And it's hard to
24 know as head of CMH how he didn't know.

25 **MR. RANGEL:** I understand the Court's ruling. All

1 I'm saying is let's respect the motions in limine.

2 **THE COURT:** I agree with you a hundred percent.

3 **MR. RANGEL:** Okay.

4 **MR. RUMLEY:** And your Honor, just so I -- I don't
5 want to get strike four, I'm going to ask him about
6 compensation and how the sales associates were compensated.

7 **THE COURT:** You may do that.

8 **MR. RUMLEY:** Okay.

9 **MR. RANGEL:** Okay.

10 **MR. RUMLEY:** And before Mr. Rangel will reply,
11 Exhibit 69, CP 69, they've already admitted into evidence.

12 **THE COURT:** Yes.

13 **MR. RUMLEY:** And so -- And --

14 **THE COURT:** And you've actually already asked the
15 lady about that --

16 **MR. RUMLEY:** And --

17 **THE COURT:** -- so there were no objections.

18 **MR. RANGEL:** In violation of the motion in limine. I
19 mean, we --

20 **MR. RUMLEY:** It's in evidence, Exhibit 69.

21 **THE COURT:** Okay, you admitted it.

22 **MR. RUMLEY:** But I want to ask --

23 **THE COURT:** Compensation structure is in evidence the
24 way I understand it.

25 **MR. RUMLEY:** I want to ask him in addition, his

1 testimony --

2 **THE COURT:** Why don't we go ahead and do this. Okay,
3 what else are you thinking about?

4 **MR. RUMLEY:** His deposition is that the average store
5 manager made less than 50,000. Mr. Wells made over \$300,000.
6 And I asked him if you have a responsibility to audit your
7 stores to look for red flags, and he says yes. And I said, do
8 you agree with me that if you have a store manager making 300
9 --

10 **THE COURT:** Go ahead. Go ahead.

11 **MR. RUMLEY:** And then --

12 **THE COURT:** Thank you.

13 **MR. RUMLEY:** And then the sales associates, their
14 compensation, they're all based on commissions, 26 percent.
15 Robin Moore and Kim Mallure (phonetic) were involved in this
16 transaction. I would like to ask him about that.

17 **THE COURT:** And their guys, their compensation, the
18 way I understand it from all this summary judgment stuff,
19 whether or not loans were (indiscernible) is that right?

20 **MR. RANGEL:** Judge, we think it's irrelevant to the
21 points that are before the Court.

22 **THE COURT:** I appreciate that, and I appreciate your
23 advocacy for your client, Mr. Rangel.

24 **MR. RUMLEY:** So --

25 **MR. RANGEL:** Judge, just for the record, can I just

1 object --

2 **THE COURT:** Yes, you may.

3 **MR. RANGEL:** -- on the record.

4 **THE COURT:** Do you want to do it this way or do you
5 want to do it --

6 **MR. RANGEL:** Well, I've already objected with respect
7 to that question.

8 **THE COURT:** Okay.

9 **MR. RANGEL:** I'm just asking; the Court's overruled
10 my objection.

11 **THE COURT:** Yes, sir.

12 **MR. RUMLEY:** One more just to make sure, the
13 partnership agreement is in evidence, okay. The partnership
14 agreement is in evidence, but they have a limine and so I'm
15 going to ask him that John Wells was awarded a partnership
16 based on his conduct. It's already in evidence.

17 **MR. RANGEL:** Objection.

18 **MR. RUMLEY:** The partnership agreement itself. I'm
19 sorry.

20 **MR. RANGEL:** Judge, I would object to any questions
21 because he is misconstruing and misinterpreting that
22 partnership agreement. It's not traditional, and that's
23 something --

24 **THE COURT:** I wonder if you could do that on
25 redirect.

1 **MR. RANGEL:** Okay.

2 **THE COURT:** Thank you.

3 **MR. RANGEL:** Okay.

4 **(Bench conference concludes at 11:16 a.m.)**

5 **BY MR. RUMLEY:**

6 Q All right, Mr. Booth, I think when we took a short break,
7 you've read the deposition of Ben Frazier, right?

8 A Yes, sir.

9 Q And Ben Frazier was not only the sales manager in store
10 214, but he was also the notary, right?

11 A Yes, sir.

12 Q And you understand that with respect to the deed of trust
13 that's involved in this case that he has testified his
14 signature is forged? You understand that, right?

15 A Yes, sir.

16 Q And you understand that his signature as the notary in the
17 builder's and mechanic's lien contracts, that in this case he
18 has testified his signature is forged, right?

19 A Yes, sir, I believe he did.

20 Q And for you as president of the company, when you learn of
21 something like that, that one of your employees who's supposed
22 to be a notary, who's supposed to have notarized signatures,
23 that he testified himself 'my signature is forged on that
24 document', does that concern you?

25 A Yes, sir.

1 Q And is that a situation where you believe that the company
2 should do something to take care of the customer?

3 A I believe we did do something.

4 Q You believe -- to the customers?

5 A The Trevinos were the ones you were speaking of, and I
6 think we -- we released their land.

7 Q Did you notify them that you were releasing the land?

8 A No, sir, I did not.

9 Q The notary practices in store 214, do you agree with me
10 that they're not just limited to deeds of trust and builder's
11 and mechanic's lien contracts, right?

12 A I've seen those allegations, yes, sir.

13 Q Well, but you also -- yesterday, the jury saw a number of
14 documents in the transaction that are notarized, right?

15 A Yes, sir.

16 Q And those don't relate to the deed of trust or the
17 mechanic's lien; those are actually documents in the
18 transaction of the -- the loan file, for lack of a better word,
19 right?

20 A We saw a power of attorney, I believe.

21 Q Right. And the question is, is there are documents within
22 the loan file, within the customer's file, that are notarized,
23 correct?

24 A There are.

25 Q And you knew and you discovered that these notary

1 practices were not just limited to deeds of trust and
2 mechanic's liens, that they were involved in the transaction
3 itself, correct?

4 A I didn't know that at the time, no, sir.

5 Q Well, you know today, right?

6 A I do today, yes, sir.

7 Q I mean you understand when you read the deposition of Ben
8 Frazier that he also testified on -- we saw some of those
9 powers of attorney yesterday?

10 A Yes, sir.

11 Q Ben Frazier testified that his signature as the notary was
12 forged on those, right?

13 A I think he did testify that, but there was all -- I've
14 read the other depositions as well from others that were
15 different than Ben Frazier's.

16 Q Did you read Robin Moore's deposition?

17 A I did, yes, sir.

18 Q And when --

19 **MR. RUMLEY:** May we approach, your Honor?

20 **MR. RANGEL:** Yes.

21 **(Bench conference begins at 11:19 a.m.)**

22 **MR. RUMLEY:** I asked Robin Moore -- He said he read
23 Robin Moore's deposition. Robin Moore was asked: Did you sign
24 Ben Frazier's name to the deed of trust? And he pled the
25 Fifth. We asked him: Did you sign Ben Frazier's name to the

1 mechanic's lien? He pled the Fifth. In a civil case, there's
2 an inference. It's --

3 **THE COURT:** I suggest you read the charge,
4 Mr. Rumley.

5 **MR. RUMLEY:** I understand, Judge, but we have --

6 **THE COURT:** It's a non-party.

7 **MR. RUMLEY:** I know, but this --

8 **THE COURT:** (indiscernible)

9 **MR. RUMLEY:** He was a party at the time of his
10 deposition in the case in Duvall, and the discovery was --

11 **THE COURT:** But not in this case.

12 **MR. RUMLEY:** But it was consolidated under the
13 Court's order and Ben Frazier's lawyer participated in the
14 deposition. It was taken -- it was taken in this matter.

15 **MR. RANGEL:** Judge, we have a motion in limine, and
16 this is very consequential. I would ask that we have an
17 opportunity to argue this outside the presence of the jury.

18 **THE COURT:** I can do that.

19 **MR. RANGEL:** He's going to --

20 **THE COURT:** I mean you go on and question him. It's
21 the last in limine when you call him and we'll talk about this.

22 **MR. RANGEL:** Okay.

23 **THE COURT:** Let's talk about this over the noon
24 break.

25 **(Bench conference concludes at 11:20 a.m.)**

1 **BY MR. RUMLEY:**

2 Q All right, Mr. Booth. You did read the deposition of
3 Mr. Moore, right?

4 A Yes, sir, I did.

5 Q All right. At the time -- Or prior to 2005, you agree
6 with me that your company had salespeople as notaries, right?

7 A Yes, sir.

8 Q And prior to, I believe, whenever you received notices or
9 when you uncovered what was going on, you didn't have any
10 policies related to notaries, correct?

11 A No, sir, we depended on the states, as they appointed
12 notaries, that it was up to them to teach and provide the
13 education or the understanding that notaries had as to what
14 their responsibilities were.

15 Q All right, but just so we're clear, you wanted at least
16 one of your sales associates to be a notary, right?

17 A It didn't have to be a sales associate. We just needed a
18 notary at the sales center. It could be an administrative
19 person. In many cases it was. In some cases, it was the
20 manager. In some cases, it was a salesperson.

21 Q Right. But you knew you had people in your store that
22 were notarizing documents, correct?

23 A Yes, sir.

24 Q And you would reimburse them for whatever they had to pay
25 to become a notary, right?

1 A Yes, sir, we did do that.

2 Q And you knew, and by 'you' I mean CMH and Vanderbilt, if
3 you know, were fully aware that you had employees that were
4 notarizing documents like deeds of trust, mechanic's liens,
5 those types of things, correct?

6 A Yes, sir.

7 Q And back during this time, you had no policy in place that
8 prevented them from notarizing a document in which they
9 maintained a financial interest, true?

10 A That's true.

11 Q And you understand that that's a prohibited act, right?

12 A I understand that we prohibit it today.

13 Q But you didn't back then?

14 A No, sir.

15 Q I mean you understand the basic concept of a notary,
16 right?

17 A Yes, sir.

18 Q They're supposed to be an impartial third person, they
19 don't have a dog in the fight, you know, they are what they
20 are, right?

21 A Yes, sir.

22 Q But you had sales associates that were notarizing
23 documents in which they had a financial interest, correct?

24 A In some cases, yes, sir.

25 Q And so the jury understands, the way that the people

1 within the Corpus Christi store were paid was based on
2 commissions, correct?

3 A The sales representatives were paid on commissions.

4 Q The store manager received a percentage of the gross
5 profit of the store, correct?

6 A Yes, sir. He was on bonus of the profit.

7 Q And they would receive somewhere in the neighborhood of up
8 to 50 percent, correct?

9 A The manager, yes, sir, could, up to 50 percent.

10 Q And the sales associates, they were paid a draw?

11 A Yes, sir, on a weekly basis.

12 Q And what a draw means is that they're paid a weekly check
13 but they owe that money back, right?

14 A Yes, sir, against future commissions.

15 Q And so you have an incentive in there for your sales
16 associates to sell homes, correct?

17 A Yes, sir.

18 Q And if a sales associate was successful in selling homes,
19 they received up to, I think, 26 percent of the gross profit of
20 the sale?

21 A During that period of time. It's changed. We review it
22 every year, but during then, yes, sir, it was 26 percent.

23 Q Let me show you Clayton Exhibit --

24 A And that was 26 percent of the gross profit. You said
25 gross profit I think, correct?

1 Q Yes, sir.

2 A Yes, sir.

3 Q Let me show you Clayton Exhibit 69, 2747. And this is
4 compensation of sales professionals. Do you see that?

5 A Yes, sir.

6 Q And you've seen this document before, correct?

7 A I believe I have, yes, sir.

8 Q All right. And we talked about it in your depositions?

9 A I think so.

10 Q Okay. And we'll go quickly through this for the jury. If
11 the salesperson was successful in selling a home, they would
12 get a percentage of the adjusted gross profit, right?

13 A Yes, sir.

14 Q And they received a base of 16 percent?

15 A Correct.

16 Q Right?

17 A Correct.

18 Q And if they got the customer to finance with Vanderbilt,
19 they got an additional four percent commission, right?

20 A Yes, sir.

21 Q And then APR above minimum each increment of 25 -- of a
22 quarter percent. Can you explain what that is?

23 A I've talked about the recourse relationship earlier
24 between CMH and Vanderbilt. So the store knew that they had
25 recourse exposure on every loan that they did, and so we

1 allowed them back then, during that time, they could actually
2 increase the rate, the interest rate, above the rate that
3 Vanderbilt approved the loan if they felt there was more risk
4 associated with the loan.

5 Q What this means is if your sales associate were able to
6 get the customer to agree to a higher interest rate than what
7 they actually qualified for, the sales associate got an
8 additional bonus?

9 A Yes, sir.

10 Q Why would a customer ever agree to a higher interest rate
11 than what they were approved for?

12 A Because that was the rate that was offered.

13 Q So they wouldn't actually tell the customer what they
14 qualified for, true?

15 A We would have qualified them on that rate.

16 **THE COURT:** Listen carefully to the question please,
17 sir.

18 **THE WITNESS:** Yes, ma'am.

19 **BY MR. RUMLEY:**

20 Q What this says, Mr. Booth, is if the salesperson is able
21 to get the customer to agree to a higher interest rate than
22 what they qualified for, they received a bonus, correct?

23 A Yes, sir.

24 Q Why would a customer ever agree to a higher interest rate
25 than what they qualified for? They wouldn't, right?

1 A I agree.

2 Q So what this is saying, this is telling Ben Frazier, Robin
3 Moore, those sales associates, is if you can get them to agree
4 to a higher rate, you're going to get a larger percentage,
5 right?

6 A Yes, sir, that's what it says.

7 Q So it's implied that they wouldn't ever tell the customer
8 what they really qualified for, right?

9 A Sir, many lenders --

10 **THE COURT:** Listen carefully --

11 **THE WITNESS:** Yes, ma'am. I'm sorry, your Honor.

12 **THE COURT:** -- to the question. Just answer the
13 question.

14 **THE WITNESS:** Okay.

15 **BY MR. RUMLEY:**

16 Q Is that right?

17 **THE COURT:** Can you do that, yes or no?

18 **THE WITNESS:** Yes, your Honor.

19 **BY MR. RUMLEY:**

20 Q Is that right?

21 A Yes.

22 Q So let's just take an example of I go into your store,
23 Mr. Booth, and I give you all my financial stuff and you type
24 everything in and you send it off to Mr. Nichols at Vanderbilt,
25 and he spits back a report that says Mr. Rumley qualified for

1 9.99 percent, okay? You come to me as a sales associate and
2 say, congratulations, Mr. Rumley, you've qualified for 10.99
3 percent. I say, great, I'm buying a home. You would get an
4 extra one percent of the gross profit, right?

5 A Yes, sir.

6 Q For being dishonest?

7 A I don't consider that dishonesty, sir.

8 Q Wouldn't the truth be you would come to me and say,
9 Mr. Rumley, you qualified for 9.99 percent interest, but if I
10 can get you to agree to ten, ten and a half, I get more money.
11 That would be the truth. That would be honesty, right?

12 A No, sir, that is not the way it worked.

13 Q Well, that's exactly how this worked.

14 A That's how they were compensated. That's not how it
15 worked between the customer and the sales representative that
16 presented the rate.

17 Q Right, because the customer would never agree to that. If
18 you told me I qualified for 9.99, I'm not going to sign a loan
19 for 10.99, true? You wouldn't, would you?

20 A I would consider the rate that was offered and accept it
21 or not accept it.

22 Q If you went for a loan, Mr. Booth, and you had a choice
23 between a 9.99 interest rate and a 10.99 interest rate, you, as
24 a customer, which one would you pick?

25 A I'd take the 9.99.

1 Q And if I'm -- if you're the person that's going to profit
2 up to one percent on that, what would you want the customer to
3 do?

4 A The 10.99.

5 Q And by the way, you don't do this anymore either, do you?

6 A No, sir, we have changed that program.

7 Q And then we come down here to gross profit, and this would
8 be the gross profit of the sale, right?

9 A Yes, sir.

10 Q And so the sales associate, the more money they could get
11 the customer to pay for the mobile home, the larger percentage
12 they got, right?

13 A Yes, sir.

14 Q Now, one of the things that you do, and not you personally
15 but someone within CMH, is to audit the stores, correct?

16 A Yes, sir, we do have audit procedures.

17 Q And do you agree with me that you have a responsibility to
18 audit the stores?

19 A Yes, sir.

20 Q And one of the things that you look at is advertising,
21 true?

22 A Yes, sir.

23 Q And I took your deposition and you are actually the
24 representative on advertising, correct?

25 A Yes, sir.

1 Q And you agree with me that this store in Corpus Christi
2 had an advertising marketing plan that says: 'Bring any deed to
3 anyone's land and you're guaranteed approval', correct?

4 A Yes, sir.

5 Q And you disagreed with that, right?

6 A I didn't like their advertising, no, sir.

7 Q Mr. Booth, we talked a lot about -- about the land-in-lieu
8 program and the sales, and one of the reasons why you had
9 notaries notarizing these deals and not title companies is
10 because you understood that you needed to create a sense of
11 urgency for the customers, correct?

12 A No, sir. It was more a function of the cost.

13 Q Well --

14 A I think the decision back then was that it would have cost
15 more for the customer if we had to take it to a title company,
16 and so therefore we closed the loans at the store. And it was
17 more convenient for the customer.

18 Q You understand, sir, you have training manuals where
19 you're training your sales associates to create urgency, right?

20 A Yes, sir.

21 Q We talked about this at length. You train them, when a
22 customer comes in, create the sense of urgency because if you
23 create a sense of urgency, they're more likely to buy, right?

24 A Yes, sir, I think --

25 Q And you have literature that says the moment that customer

1 walks out your door, as soon as they walk off that lot, it's
2 less likely that they're going to buy the home, right?

3 A Yes, sir.

4 Q You want to keep them on the lot, and there's a sense of
5 urgency and you want to create urgency so that they buy the
6 home, right?

7 A Yes, sir, I think it's true.

8 Q And if we look at the finance and insurance manual,
9 Exhibit 162 for CMH Retail, that's -- one of the jobs of the
10 sales associates is underwriting, right?

11 A Yes, sir.

12 Q They're the ones that fill out the loan applications,
13 they're the ones that put together the packet that is then
14 submitted to sales processing in Tennessee, which is CMH, and
15 then given to Vanderbilt, correct?

16 A Yes, sir.

17 Q And what CMH and Vanderbilt do in Tennessee is they review
18 all of the documents, correct?

19 A Yes, sir.

20 Q And they're supposed to review the documents for
21 signatures, right?

22 A Yes, sir.

23 Q They're supposed to make sure that they're properly
24 notarized, right?

25 A Yes, sir.

1 Q And when they review all those, then they're supposed to
2 approve the loan, correct?

3 A Yes, sir.

4 Q When all of those documents are in place in Tennessee,
5 that's when the loan is approved, correct?

6 A That's when the loan is funded. The loan was approved
7 some time prior to that when Vanderbilt approved the loan back
8 to the sales center.

9 Q Okay.

10 A We fund it in Tennessee.

11 Q I understand. But all of the documents are in Tennessee
12 related to the transaction before that transaction is allowed
13 to close?

14 A Yes, sir.

15 Q Correct? And in a land-in-lieu transaction, that means
16 that the deed of trust, mechanic's lien contract, those would
17 all be part of the package before the loan is funded, right?

18 A Yes, sir.

19 Q And you know, Mr. Booth, that didn't happen in this case,
20 right?

21 A No, sir, I don't know that.

22 Q What was the date of the installment contract?

23 A The date of the installment contract I saw yesterday was,
24 I think, January the 5th.

25 Q January 5th. When was the deed of trust recorded?

1 A I don't remember the date it was recorded. I remember the
2 date of the -- of the -- the builder's and mechanic's lien I
3 think was the next -- the 7th, maybe two days later.

4 Q So how -- if they were recorded -- if they were signed and
5 recorded a week later, those documents could never have made
6 their way to Tennessee before the loan was funded and the deal
7 was closed?

8 A I don't think the -- I think we established earlier today
9 the deal was funded on the 16th of January.

10 Q When was the deal closed?

11 A The deal was closed as far as the retail installment
12 contract, which is the debt part of the deal, on the 5th.
13 That's what I saw yesterday.

14 Q And before a transaction is closed in a land-in-lieu, they
15 are to have all of the documents?

16 A No, sir. I said all of that has to be done before it
17 funds, not before it closes. We close -- The date they sign
18 the retail installment contract can be considered part of the
19 closing. That starts the closing process. But all of that
20 does not have to be done until the deal funds with Vanderbilt
21 Mortgage.

22 Q Isn't it true, sir, that before Vanderbilt will approve a
23 transaction, they have to have recorded copies of the deed of
24 trust and the mechanic's lien?

25 A No, sir, that's not true.

1 Q If the documents show that, you just disagree, right?

2 (No audible response)

3 Q Do you disagree with that?

4 A I disagree with the fact that all that has to be done
5 before we can close the transaction at the sales center.

6 Q Do you agree with me that if it's a land-in-lieu, the deed
7 of trust and the mechanic's lien all have to be filed --
8 signed, filed and recorded and verified that it was recorded --
9 before the deal is closed, true?

10 A That's not my understanding, no, sir. Just before it
11 funds with Vanderbilt.

12 Q You understand that one of the marketing plans or the
13 advertising in place was that your store managers would send
14 out letters, correct? They were authorized to send out
15 marketing letters --

16 A Prospect letters?

17 Q Prospect letters.

18 A That type of thing? Yes, sir.

19 MR. RUMLEY: Your Honor, we would offer Defendants'
20 Exhibit 452, which is one of these prospect letters.

21 MR. RANGEL: Objection on relevancy grounds, your
22 Honor.

23 THE COURT: Yes, sir?

24 MR. RUMLEY: It says -- It advertises the land-in-
25 lieu, and it guarantees -- if they bring in any deed, it

1 guarantees approval or they get 500 bucks.

2 **MR. RANGEL:** Your Honor, we object that he's reading
3 the document.

4 **MR. RUMLEY:** She asked for relevancy.

5 **THE COURT:** I'm sorry; overruled.

6 **BY MR. RUMLEY:**

7 Q Sir, you and I have talked about Mr. Frazier's letter,
8 correct?

9 **THE COURT:** Yes.

10 **THE CLERK:** I'm sorry, your Honor.

11 **THE COURT:** I'm sorry, the number again?

12 **MR. RUMLEY:** We offer Exhibit 452.

13 **THE COURT:** Exhibit 452 is admitted.

14 **(Defendants' Exhibit Number 452 is received in evidence)**

15 **BY MR. RUMLEY:**

16 Q Do you remember this letter, Mr. Booth?

17 A I don't remember this letter, no, sir.

18 Q First of all, what we read right here, it says 'Clayton
19 Homes, Inc.', right?

20 A That's what it says, yes, sir.

21 Q And does Clayton Homes, Inc., are they the ones that run
22 the 214, or brand, of 214 sales center?

23 A No, sir, they're not.

24 Q Do you know it says Clayton Homes, Inc.?

25 A I have no idea.

1 Q But whatever we know is that this letter by Mr. Frazier,
2 one of these prospector letters, had Clayton Homes, Inc. at the
3 top, correct?

4 A Correct.

5 Q And if we come down, do you agree with me that if you
6 bring in any deed to anyone's land that you're guaranteed,
7 automatically guaranteed?

8 A I do not agree with that.

9 Q Was that what was in place back in 2002/2003?

10 A No, sir, that was never in place anywhere that I know of.

11 Q If we look at this letter, it says:

12 'If you have land to use, we will not require you to
13 put any cash money down on one of our homes. The land does not
14 have to be in your name. It can be in any shape and size. No
15 matter what your credit is, if you have land or know someone
16 that does, you can get a home. We are the only ones that offer
17 this program.'

18 Can you see that?

19 A Yes, sir, I see it.

20 Q And is that a truthful statement as far as you-all are the
21 only ones that offered this program, right?

22 A Yes, sir, that I'm aware of, yes, sir.

23 Q And no one else allowed someone's land to be pledged for
24 someone else to buy a home unless they also co-signed on the
25 loan, correct, except for you?

1 A I think we've seen examples of other lenders that did do
2 that.

3 Q If we come down, it says right here: 'Ben Frazier, sales
4 manager.' And Mr. Frazier, would he have been authorized as
5 the sales manager to send out letters like this?

6 A Yes, sir.

7 Q Now, one of the things that you do, sir, is you audit the
8 stores, correct?

9 A Our company audits the stores. I don't do it personally
10 but our company does.

11 Q And how much does an average store manager make?

12 A Eighty, \$90,000.

13 Q How much -- When Mr. Wells was there when they were doing
14 this land-in-lieu program before the policies were implemented,
15 before they had to close at the title company, how much was
16 Mr. Wells making?

17 A It varied over the four or five years that he was there,
18 pretty dramatically.

19 **MR. RUMLEY:** Your Honor, we would offer Exhibit 468.

20 **MR. RANGEL:** Objection, relevancy, your Honor.

21 **THE COURT:** Let me see counsel at the bench then.

22 **(Bench conference begins at 11:39:08 a.m.)**

23 **MR. RUMLEY:** It's their discovery response.

24 **THE COURT:** Overruled. Thank you.

25 **(Bench conference concludes at 11:39:26 a.m.)**

1 **BY MR. RUMLEY:**

2 Q Now Mr. Booth, if your average store manager is making
3 \$80,000, is there any amount of money that you look at that
4 would raise a red flag --

5 **THE COURT:** It's admitted, thank you.

6 **(Defendants' Exhibit Number 468 is received in evidence)**

7 **BY MR. RUMLEY:**

8 Q -- that maybe something -- something needs to be looked
9 into?

10 **(No audible response)**

11 Q Is that something that you-all look at?

12 A Yeah, we do look at it. We look at a number of things.

13 Q It looks like Mr. Wells in 2000 made \$202,000?

14 A Yes, sir.

15 Q In 2001, he made \$323,000?

16 A Yes, sir.

17 Q Is that a situation where the store manager at one of your
18 stores is making four times as much as your average? Is that a
19 situation where you want to look into it?

20 A No, sir, that's -- I mean that is commonplace. You'll
21 have managers that will exceed by great amounts other managers.

22 Q Do you agree that's a lot --

23 A That's the history of our business.

24 Q That's a lot of money, right?

25 A That's a lot of money.

1 Q In 2002, \$296,000?

2 A Yes, sir.

3 Q In 2003, \$171,000?

4 A I can't -- You moved it.

5 Q Oh, I'm sorry.

6 A Yes, sir, that's correct.

7 Q And then 2004, \$57,000?

8 A Correct.

9 Q And what happened in 2004?

10 A There was a great deal of negative local publicity
11 surrounding the sales center.

12 Q Surrounding what?

13 A Allegations that had been made regarding the sales center.

14 Q What else happened in 2004, Mr. Booth?

15 A The whole team resigned ultimately. The whole team left
16 sales center 214.

17 Q We'll get to that in a minute. But the other thing that
18 happened is you put in new policies and procedures, right?

19 A We did.

20 Q You put in policies and procedures that prevented your
21 sales associates who were getting up to 26 percent commission
22 in the transaction, you prevented them from notarizing the
23 documents in the transaction, right?

24 A Yes, sir.

25 Q You started making them close at title companies, right?

1 A Yes, sir.

2 Q And you agree with me that before those policies were in
3 place that there was nothing that prevented a sales associate
4 from forging a landowner's signature, or notarizing a
5 landowner's signature who had been forged, other than the
6 notary, right?

7 A That and ethics, honesty, all those things that I think
8 are important to people.

9 Q Right. But you relied on your notary for that, right?

10 A We relied on the notary to notarize the signatures, yes,
11 sir.

12 Q Mr. Frazier?

13 A Yes, sir.

14 Q And --

15 MR. RUMLEY: Your Honor, we'd offer Defendants'
16 Exhibit 222, the commissions of the sales associates, their
17 discovery answers.

18 MR. RANGEL: Same objection, your Honor.

19 THE COURT: Number is?

20 MR. RUMLEY: Two twenty-two.

21 THE COURT: Let me see counsel at the bench, please.

22 (Bench conference begins at 11:42:38 a.m.)

23 (Pause - The Court reviews the exhibit)

24 THE COURT: Overruled. Thank you.

25 MR. RANGEL: And the objection is overruled,

1 relevancy?

2 **THE COURT:** And it's admitted, yes, sir. Exhibit 222
3 is admitted.

4 **(Bench conference concludes at 11:42:58 a.m.)**

5 **(Defendants' Exhibit Number 222 was received in evidence)**

6 **BY MR. RUMLEY:**

7 Q Mr. Booth, during this time there's no doubt that Ben
8 Frazier was notarizing documents in which he had a financial
9 interest, correct?

10 A In some cases, I'm sure.

11 Q And the people in Tennessee charged with reviewing these
12 documents, they would have seen that, correct?

13 A They would have seen his notarization, yes, sir.

14 Q And they would have known that he's the assistant store
15 manager and getting a percentage in the transactions?

16 A They probably would not have known that.

17 Q Well they actually -- When you plug in the numbers, they
18 actually calculate what the gross percentage is that goes to
19 the sales associates, right?

20 A Well, that's the accountants in the retail company.
21 That's not the same team that you're talking about that's
22 reviewing the documents.

23 Q Well, someone in Tennessee knows who the salesperson is on
24 the transaction?

25 A Yes, sir, they do.

1 Q Okay. So they know they're going to get a financial
2 interest in the transaction?

3 A Yes, sir.

4 Q And they could look at that and compare the notary and
5 say, wait a minute, that person has a financial interest,
6 right?

7 A They could.

8 Q If we look -- I'll talk to you about a couple of people,
9 Mr. Frazier, Mr. Wells and Mr. Moore. Now, John Wells also
10 received commissions where he was the salesperson, right?

11 A Yes, sir.

12 Q Okay. If we look at Mr. Frazier, he made a little under
13 \$50,000 in 2000, right?

14 A I can't see his name now, but that's the right line, yes,
15 sir.

16 Q I'm pointing. Okay. And then in 2001, he made \$67,000?

17 A Yes, sir.

18 Q And then in 2002, he made \$50,000, right?

19 A Yes, sir.

20 Q And then in 2002, Mr. Frazier was actually terminated,
21 right?

22 A He was, yes, sir.

23 Q And do you know whether or not he was fired as a result of
24 notary problems, notary practices?

25 A He was not.

1 Q You understand that Kevin Clayton, the CEO of the company,
2 sent out a voice mail, right?

3 A Yes, sir.

4 Q And in that voice mail, he identified or he said that all
5 of this relates to an employee who was fired more than a year
6 ago?

7 A That's what he said, yes, sir.

8 Q And who was that employee? Mr. Frazier?

9 A I think he was referring to Mr. Frazier.

10 Q If Mr. Frazier was fired in 2002 for these notary
11 problems, he was the notary, right?

12 A He was the notary.

13 Q And all of the transactions you've looked at all relate to
14 him as the notary and whether or not he signed them or someone
15 else used his stamp, correct?

16 A Yes, sir.

17 Q And it was common practice for the other sales associates
18 to use his stamp, correct?

19 A I read testimony that said -- by several that said they
20 had used his stamp.

21 Q And so people in the office who are not notaries would
22 take his stamp and they would go notarize someone's signature,
23 correct?

24 A I read where one said he did that.

25 Q I mean, and that's the notary problem that we're talking

1 about, correct?

2 A Yes, sir.

3 Q And that's not good, is it?

4 A No, sir, it's not.

5 Q And if you find out that information, don't you think you
6 owe it to your customers to tell them?

7 A Sir, I think they knew that. I think they were aware that
8 there were allegations surrounding it. You know, we're talking
9 about information that you just referred to that I just learned
10 reading depositions.

11 Q You understand, sir, that during the investigation that
12 there was signatures that were falsely notarized, correct?

13 A That's what was alleged, yes, sir.

14 Q Well, but you know, you've looked at documents that show
15 it to be true, right?

16 A Yes.

17 Q And I'll give you one good example. After Mr. Frazier was
18 fired, we have documents where they're still using his notary
19 stamp.

20 A Yes, sir, I know that.

21 Q Is that acceptable?

22 A No, sir.

23 Q That's a situation where you know, as president of this
24 company, that notary fraud is going on, right?

25 A Yes, sir. After the fact, I knew.

1 Q You knew once you got sued, right?

2 A That's when we first became aware. We had never been
3 aware that there were any allegations prior to that.

4 Q If documents are being notarized by Mr. Frazier, shouldn't
5 someone have figured that out when the documents go to
6 Tennessee?

7 A No, sir, I don't know that there's any way anybody could
8 have figured that out in Knoxville looking at the signatures
9 and the different information.

10 Q All right. You understand, Mr. Booth, that Mr. Frazier is
11 testifying that his signature has been forged to a number of
12 notaries, correct?

13 A I read in his deposition that, yes, sir.

14 Q One of the other ways that you have determined that the
15 notary -- this notary fraud was going on in the store is you
16 had notarizations, false notarizations of people that could
17 never have signed the document, correct?

18 A Yes, sir, that's alleged, yes, sir.

19 Q But you have proof of that, correct?

20 A I don't have proof of that, no, sir.

21 **MR. RUMLEY:** May we approach?

22 **THE COURT:** Yes.

23 **(Bench conference begins at 11:48:48 a.m.)**

24 **MR. RUMLEY:** I'm limiting my questions to notary, the
25 notary was forged, not the customers, but we have Agapita

1 Saenz, who is dead, and her signature was notarized by
2 Mr. Frazier, and I have a certified copy of her death
3 certificate and the deed of trust and mechanic's lien that show
4 her signature was notarized.

5 **MR. RANGEL:** Judge --

6 **THE COURT:** Does he not know that? Could your client
7 not know that?

8 **MR. RANGEL:** After the fact. I mean, from reading
9 his deposition.

10 **MR. RUMLEY:** He just denied it.

11 **THE COURT:** He just -- he never knew. He did say
12 after that.

13 **MR. RANGEL:** The way that Mr. Rumley is phrasing the
14 question, he's suggesting he knew about that then. He didn't
15 know about that then, but --

16 **THE COURT:** He's asking did you ever know that. He
17 didn't say a specific time.

18 **MR. RANGEL:** Well, you know, in fairness, Judge, this
19 is very, very inflammatory.

20 **THE COURT:** It is.

21 **MR. RANGEL:** It's very inflammatory. And this is a
22 clear case where the prejudicial impact compared to the
23 probative value is way, way --

24 **THE COURT:** If he had just answered a little bit
25 differently, I would agree with you, but that's off the record.

1 **(Bench conference concludes at 11:49:57 a.m.)**

2 **MR. RUMLEY:** Your Honor, we would -- Defendants would
3 offer Defendants' 68 and Defendants' -- I'll identify for the
4 record the deed of trust of Agapita Saenz as Defendants' 68;
5 the builder's and mechanic's lien contract of Agapita Saenz,
6 Exhibit 69; and Defendants' Exhibit 70, which is the certified
7 copy of the death certificate.

8 **MR. RANGEL:** Judge, we would object to these --

9 **THE COURT:** Sustained.

10 **BY MR. RUMLEY:**

11 Q Mr. Booth, when is it -- when is it that you changed the
12 way the sales associates were compensated?

13 A Sir, that's evolved and changed over the years. I don't
14 know what you're referring to.

15 Q With respect to the commission-based system that we talked
16 about.

17 A The commission-based system was in place when I joined the
18 company in 1990.

19 Q Are the sales associates still compensated for placing a
20 loan with Vanderbilt?

21 A No, sir. That changed a year or so ago.

22 Q All right. I want to ask you, one of the things, one of
23 the reasons I think you told us is the reasons for filing the
24 releases was to protect the landowner. Did I write that down
25 right?

1 A No, sir. What I said was the reason was to end the
2 controversy surrounding the land.

3 Q Is one of the reasons why you filed the releases, sir, to
4 protect the interests of the third-party landowners?

5 A Yes, sir.

6 Q Correct?

7 A Could have been, yes, sir.

8 Q And you gave a declaration to that extent, right?

9 A Yes, sir.

10 Q One of the reasons -- one of the reasons for filing these
11 releases is to protect, like, for example, my clients, the
12 Trevinos, correct?

13 A Yes, sir.

14 Q Because -- Well tell me, how does it protect them? How
15 does filing that release protect them?

16 A Should there have been anything improper involved in the
17 Trevinos' relationship with the company as far as the pledging
18 of the land or the signing of the documents, et cetera, then it
19 was the right thing to do was to release their land where there
20 was no indebtedness, I mean, for the land. I mean, the lien
21 was released.

22 Q And the way it protects them is, is that if there's a
23 default, they don't get their land taken away, correct?

24 A Yes, sir, that's true.

25 Q Because you understand the purpose of the deed of trust

1 when you file one is to perfect your lien on their land, right?

2 A Yes, sir.

3 Q And the intent behind that document is, is if the customer
4 doesn't pay, you're going to take the land under the terms of
5 the deed of trust, right?

6 A Yes, sir.

7 Q That's the intent behind filing those documents?

8 A Additional collateral.

9 Q Right?

10 A Additional security.

11 Q And at the moment those documents are filed, that is the
12 intent, is to make the Trevinos pay or risk losing their land,
13 correct?

14 A Yes, sir.

15 Q And you recognize, Mr. Booth, that your former employee,
16 your former sales manager in this case, has testified that on
17 those very documents, the deed of trust and the mechanic's
18 lien, that they are not properly notarized, correct?

19 A Yes, sir.

20 Q And you understand that that deed of trust and that
21 mechanic's lien was filed by your company, correct?

22 A Yes, sir.

23 Q And by 'your company', I mean CMH, right?

24 A Yes, sir.

25 Q All right. And so CMH would have filed those documents, I

1 think there's a recording date sometime I think maybe a week
2 after, January 16th or somewhere around there, correct?

3 A I don't know. I don't recall.

4 Q Well, those documents would have been filed by someone
5 within CMH, correct?

6 A At the time that, okay, they signed the deed of trust and
7 the mechanic's lien --

8 Q Yes, sir.

9 A -- contract? Yes, sir.

10 Q I mean you would have filed it, right?

11 A That's the way we did it, yes, sir. Local personnel would
12 have done that.

13 Q The television commercials that you-all would run, would
14 they have to be approved by the general manager?

15 A The general manager of Corpus Christi.

16 Q The general manager over the store?

17 A Yes, sir.

18 Q Was there ever a situation, do you recall, Mr. Booth, in
19 one of the internal audits done of the store that kind of
20 raised a red flag that maybe there was something not right
21 going on there?

22 A We initiated an internal audit for that store. I do
23 remember that.

24 Q Do you remember doing an internal audit in 2002, three
25 years before these releases?

1 A Yes, sir.

2 Q And what was the internal audit?

3 A The allegations were that there was an improper
4 relationship I think with a vendor or with a contractor, and
5 that was investigated. We asked internal audit to go in there
6 and do their thing at the sales center, and they did.

7 Q Mr. Wells, the store manager, was paying his dad to move
8 homes, right?

9 A Yes, sir, he was a contractor.

10 Q And the red flag came up because his dad was paid, in
11 2002, \$466,000 for moving homes in 2002, correct?

12 A He delivered and installed over a hundred homes that year
13 for that store.

14 Q And that's the same year that John Wells made over
15 \$300,000?

16 A Yes, sir.

17 Q Wasn't that a red flag in 2002 that you have a store
18 manager and his dad that are making over \$800,000?

19 A No, sir. I mean the internal audit did not find there was
20 any irregularity. They investigated -- He had four different
21 places he did business. He set homes up for a number of the
22 sales centers, not just Corpus Christi but for other sales
23 centers all over South Texas.

24 Q I think you told me in the deposition that all that means
25 to you is that the store was performing well, right?

1 A The store was performing well as far as everything we knew
2 at the time.

3 Q All right. And you didn't see a drop in the amount of
4 money that store was making until after you implemented a
5 number of policies and procedures, correct?

6 A We had begun to implement policies and procedures.

7 Q After --

8 A We were still doing a lot of land-in-lieu financing all
9 over the country.

10 Q But not with third-party land, right? You don't do that
11 anymore?

12 A We did for two or three years after that, and then the
13 third-party we stopped doing and put it in the name of the
14 borrower.

15 Q And that's a good policy, isn't it?

16 A I think it is a good policy.

17 Q It's a good policy that if someone is going to put up
18 their land for someone else to buy a home that you actually
19 close the transaction at a title company, or before a lawyer or
20 someone, just to verify everyone is who they say they are,
21 everyone's signature is who they say it is, right? I mean,
22 that's the good thing?

23 A I think it really is a good thing. I'm glad we do it that
24 way today.

25 Q And back in 2002, you didn't do it that way?

1 A We did not.

2 MR. RUMLEY: Thank you, Mr. Booth. That's all I
3 have.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Thank you. Mr. Gutierrez?

6 MR. B. GUTIERREZ: Yes, your Honor.

7 THE COURT: I think that's the right order, isn't it?

8 (No audible response)

9 CROSS EXAMINATION

10 BY MR. B. GUTIERREZ:

11 Q Mr. Booth, one of the things or one of the first things
12 that Mr. Rumley asked you about was your testimony back in --
13 back on June 3rd of 2010, concerning this business about
14 releasing the loans, remember --

15 A Yes, sir.

16 Q -- you said that that was a mistake?

17 A Uh-huh.

18 Q Maybe we could look at this. This is what was shown. The
19 question by Mr. Rumley was:

20 'QUESTION: Are you here on behalf of the corporation with
21 respect to the lien releases that were filed in the fall of
22 2005 related to store 214?'

23 Q And you see your answer there. And I believe you've told
24 us that that was either a mistake by the court reporter that
25 was taking your testimony, but that you believe that that is a

1 mistake, right?

2 A Yes, sir, I do.

3 Q But that's not the only time that you told us, under oath,
4 that you had made the decision to release all the loans from
5 214, is that correct?

6 A Sir, I don't remember ever --

7 Q Sir?

8 A I don't remember ever saying that we were going to release
9 the loans.

10 **MR. B. GUTIERREZ:** Your Honor, may I present this to
11 the witness, his testimony?

12 **THE COURT:** Yes.

13 **(Mr. Gutierrez provides a transcript to the witness)**

14 **BY MR. B. GUTIERREZ:**

15 Q Can you look at your deposition testimony?

16 **MR. B. GUTIERREZ:** And this is, for counsel's
17 reference, this is from page 130, counsel, starting on line 19.

18 **BY MR. B. GUTIERREZ:**

19 Q Do you see the question?

20 A Yes, sir, I do see it.

21 Q Okay. And do you see your answer?

22 A Yes, sir.

23 Q Okay. Did you in fact, when you were asked during your
24 deposition by Mr. Rumley about this decision that you made,
25 that you told him under oath that it was your understanding that

1 as far as the releases were concerned from store 214, it
2 related to any loan, any loan --

3 A Any loan that had land.

4 Q Let me finish my question.

5 A Oh, yes, sir; I'm sorry.

6 Q Any loan that had land associated with it? In other
7 words, any transaction that was under your marketing program
8 the land-in-lieu program, right?

9 A Sir, that was not my marketing program.

10 Q It was somebody's marketing program?

11 A Yes, sir.

12 Q Right. It was your company's marketing program?

13 A Sir, are you referring to the statement that you just
14 read --

15 Q Yes.

16 A -- in the deposition?

17 Q Is that true or not true?

18 A No, sir, that's not true what you just said.

19 Q Then --

20 A The way I interpreted that question and answered that
21 question, that we were talking about loans that had land
22 associated with them. That was the land that we released.

23 **MR. B. GUTIERREZ:** Your Honor, may I be permitted to
24 show this to the jury?

25 **MR. RANGEL:** Judge, he --

1 **THE COURT:** You know, maybe it's time to take a lunch
2 break. Would you pick that up, please?

3 **MR. B. GUTIERREZ:** Yes.

4 **THE COURT:** We'll start back at 1:00 o'clock. Would
5 you please stand for the jury?

6 **(The jury exits the courtroom at 12:02 p.m.)**

7 **(The Court confers with the Clerk)**

8 **THE COURT:** Now, where are we? Two things we were
9 going to take up over the lunch hour?

10 **MR. RANGEL:** Yes, your Honor, the -- Well --

11 **THE COURT:** The gentleman that took the Fifth
12 Amendment and then this particular area.

13 **MR. RANGEL:** Right, Judge. With respect to this
14 particular area, I think obviously this sort of relates to the
15 question Mr. Rumley had already asked him and we were going to
16 have the opportunity to play the audio and his response was
17 that playing it (indiscernible).

18 **THE COURT:** Yes.

19 **MR. RANGEL:** Now on this --

20 **THE COURT:** But I understood he said this another
21 time.

22 **MR. RANGEL:** Judge, if the Court will review the
23 questions and answers --

24 **THE COURT:** Yes, please, I will. You can just put it
25 under there if you'd like. You don't want to get close to me

1 with my cold.

2 **MR. RANGEL:** It's question --

3 **MR. B. GUTIERREZ:** Page 130, your Honor, I believe it
4 starts on line 19. And then --

5 **THE COURT:**

6 'QUESTION: How did you decide which ones you were going to
7 release?'

8 **MR. RANGEL:** Judge, he's not saying that the loans
9 are going to be released.

10 **THE COURT:** Okay, my understanding is it was any loan
11 that had land associated with it.

12 **MR. B. GUTIERREZ:** Then the question --

13 **THE COURT:** I'm not -- So, you know what? It seems
14 to me that he ought to be able to read that to him and say, 'Do
15 you remember you said that?' You mark that down to clarify on
16 redirect.

17 **MR. RANGEL:** And so long as I can put it in the
18 context with the audio.

19 **THE COURT:** You can, because I -- you know, I
20 understand that you may have -- Anyway, fix it up at redirect
21 if you want.

22 **MR. RANGEL:** I will, your Honor.

23 **MR. B. GUTIERREZ:** There's just one other area and we
24 might as well clear it up now.

25 **THE COURT:** Right. You said there was another place

1 where he said that.

2 **MR. B. GUTIERREZ:** It's on page 131. Just going to
3 the page number on there. And if we look on page 131, line
4 one.

5 'QUESTION: Were there any dates or just every single one?'

6 **MR. B. GUTIERREZ:** And his answer was:

7 'ANSWER: I think it was all the outstanding loans.'

8 **MR. B. GUTIERREZ:** And I want to ask him --

9 **THE COURT:** Okay, you can put that in context because
10 I'm sure there will be a major context.

11 **MR. RANGEL:** Thank you, your Honor.

12 **THE COURT:** Now let's take up the Fifth Amendment
13 issue.

14 You can stand down. Thank you, sir.

15 **MR. RANGEL:** Judge, if the Court please, may I
16 approach? We have prepared a file brief that we submit -- I'm
17 sorry.

18 **THE COURT:** I am insulated.

19 **(Laughter)**

20 **MR. RANGEL:** We would ask leave of the Court to file
21 this trial brief on the --

22 **THE COURT:** On the issue of the Fifth Amendment?

23 **MR. RANGEL:** Yes, your Honor, on the issue involving
24 Robin Moore and the --

25 **THE COURT:** My research says that it's discretionary

1 with me.

2 **MR. RANGEL:** That is my understanding, your Honor.

3 **THE COURT:** Is that the bottom line?

4 **MR. RANGEL:** But there are -- I think there are
5 limitations --

6 **THE COURT:** But there are nuances that you want me to
7 hear about. Why don't you just tell me what the brief says and
8 I'll read it over the lunch hour too.

9 **MR. RANGEL:** Okay. Number one, Moore was not
10 involved in the Flores/King/Trevino transaction, and that is
11 very, very important.

12 **THE COURT:** He wasn't -- Say that again.

13 **MR. RANGEL:** He was not the salesman, your Honor.

14 **MR. UNIDENTIFIED:** That -- that's not true.

15 **THE COURT:** I thought he was a salesman at 214.

16 **MR. RANGEL:** But the transactions, the --

17 **THE COURT:** He was a salesman at 214.

18 **MR. RANGEL:** He was.

19 **THE COURT:** And he was the one allegedly who first
20 said in the 2005 case that he had forged the name of the
21 notary.

22 **MR. RUMLEY:** Yes.

23 **THE COURT:** And then he took the Fifth Amendment
24 about it later.

25 **MR. RANGEL:** But in the context of this particular

1 case, he was not the salesman, your Honor.

2 **THE COURT:** Did he forge the name of the notary on
3 this one?

4 **MR. RUMLEY:** That's what he -- that's the inference.
5 We asked him -- I showed him the Trevino deed of trust and
6 said: 'Did you forget this signature?', and he took the Fifth.

7 **MR. RANGEL:** That is not --

8 **MR. RUMLEY:** That's giving inference.

9 **MR. RANGEL:** No, that is not --

10 **MR. RUMLEY:** Because I asked him if he was involved
11 in the Trevino transaction --

12 **MR. RANGEL:** That is --

13 **MR. RUMLEY:** -- and he took the Fifth.

14 **MR. RANGEL:** That is not correct because he took the
15 Fifth -- I asked him later whether he had forged signatures.
16 He said no.

17 **MR. RUMLEY:** No --

18 **MR. RANGEL:** Wait a minute, wait a minute. It was a
19 gen -- the way the question was framed, he pled the Fifth
20 Amendment. But when I asked him directly --

21 **THE COURT:** So he continued to answer questions after
22 that?

23 **MR. RANGEL:** Later, later.

24 **THE COURT:** In the same deposition? He took the
25 Fifth for part and answered the rest?

1 **MR. RANGEL:** Oh, he took -- I mean he did not take
2 the Fifth on every question.

3 **THE COURT:** Where is he? Where is he?

4 **MR. RUMLEY:** He's here in Corpus.

5 **THE COURT:** Well why don't you subpoena him?

6 **MR. RUMLEY:** Well, because we had an agreement with
7 them --

8 **THE COURT:** Apparently not.

9 **MR. RUMLEY:** -- and his criminal lawyer.

10 **MR. RANGEL:** Mr. Barroso.

11 **MR. RUMLEY:** His criminal lawyer does not want him to
12 testify, your Honor.

13 And going to the Court's point, when Mr. Rangel asked
14 him questions, he answered them. And he asked:

15 'Did you forge the Trevinos' signature?'

16 And he says no. So that -- he can play that. What
17 we're entitled to play is:

18 'Did you forge the notary signature on the deed of
19 trust? and he takes the Fifth. And that's -- that's -- there's
20 lots of case law that says -- I mean silence in a civil case is
21 some of the best evidence. I mean, if he wasn't involved in
22 the Trevino transaction at all, then there was no reason to
23 take the Fifth.

24 But the testimony is, is that there were a number of
25 people would be involved in the transactions. There was --

1 **THE COURT:** Who's his criminal defense attorney?

2 **MR. RUMLEY:** Ron Barroso.

3 **THE COURT:** I don't know why you can't subpoena him.

4 **MR. B. GUTIERREZ:** We had agreed with counsel. He
5 had agreed that we could play his deposition.

6 **THE COURT:** Well apparently Mr. Rangel is not
7 agreeing now.

8 **MR. B. GUTIERREZ:** No. No, you don't.

9 **MR. RANGEL:** No. We agreed -- The issue was whether
10 he was available or unavailable in terms of the deposition, and
11 we said, look, we will not take the position that he's
12 unavailable. He just had a baby last week, he and his wife.

13 **THE COURT:** Extraordinary.

14 **MR. RANGEL:** And -- But we said we are --

15 **THE COURT:** So he's not up and about yet?

16 **(Laughter)**

17 **MR. RANGEL:** He and his wife.

18 **THE COURT:** Okay.

19 **MR. RANGEL:** We were reserving the substantive
20 objections, including going into the fact that he pled the
21 Fifth Amendment, your Honor. He was not the salesman in this
22 transaction. And sure, it's the discretion of the Court, but
23 there are limits.

24 **MR. B. GUTIERREZ:** May I just add also, your Honor,
25 that I specifically asked Mr. Moore if he had forged any of the

1 signatures shown in the document, showing the document that
2 showed the signature -- purported signature of Maria Trevino
3 and Mr. Arturo Trevino as well as Benjamin Frazier, and he took
4 the Fifth Amendment.

5 **MR. RUMLEY:** And then he --

6 **THE COURT:** But yet he answered Mr. Rangel?

7 **MR. RUMLEY:** Yes, correct.

8 **MR. RANGEL:** Judge, the way the question was framed,
9 and Mr. Barroso felt --

10 **THE COURT:** Why don't you let me look at the
11 deposition that you want to offer.

12 **MR. LOCHRIDGE:** It's attached to the brief, your
13 Honor.

14 **THE COURT:** Oh.

15 **MR. UNIDENTIFIED:** Not in its entirety.

16 **MR. LOCHRIDGE:** No, but the parts that we're talking
17 about here are attached to the brief.

18 **THE COURT:** Well, I don't -- you know, I don't see
19 how he can take the Fifth, actually, if he answers, partially
20 answers, I just don't see how he can do that. I don't know why
21 you don't just bring him in.

22 **MR. RUMLEY:** Because I think, your Honor, it's
23 because in 2005 he testified over and over and over and over
24 that he signed Ben Frazier's name. And so he has all these
25 admissions that he signed Frazier's name.

1 **THE COURT:** What I'm not understanding is why you
2 don't bring him in. Agreement with his defense attorney or
3 not, you can't partially take the Fifth Amendment.

4 **MR. RUMLEY:** My understanding is, is there's a case
5 that says if someone takes the Fifth Amendment that they're
6 unavailable. The other reason, your Honor --

7 **THE COURT:** But he didn't. He answered Mr. Rangel's
8 questions.

9 **MR. RUMLEY:** Right, about the Trevinos, but the part
10 that we want an inference on is the part that he took the
11 Fifth.

12 And the other thing I would add is that we consider
13 that deposition, under Rule 32(a)(3), as a deposition of a
14 party, so there is no unavailability requirement, because at
15 the time this Court had consolidated, over my objection, the
16 Duvall County case. And remember, we had the discussion about
17 we have to have the discovery matters heard here. So his
18 deposition was taken. And Mr. Frazier's lawyer, who wasn't a
19 party to that case, actually participated during the
20 deposition, so we believe the deposition is of a party.

21 **THE COURT:** Okay, I still don't see where he took the
22 Fifth. You have not given me that part of the deposition.

23 **MR. RANGEL:** And your Honor, at the time --

24 **THE COURT:** Where is that?

25 **MR. RANGEL:** At the time that he took the Fifth, he

1 was not an employee of any of the Clayton Parties.

2 **THE COURT:** That is not -- that doesn't matter. But
3 when -- and the tran --

4 **MR. RUMLEY:** Your Honor --

5 **THE COURT:** Give me the deposition.

6 **MR. RUMLEY:** -- this is --

7 **THE COURT:** The transaction and issue though, he was
8 an employee.

9 **MR. RANGEL:** But he was not the salesman, your Honor.
10 He was not the salesman on this transaction. Lance Kimball was
11 the salesman.

12 **THE COURT:** Well, but the whole deal is did the
13 Trevinos -- from Mr. Rumley's point of view, did the Trevinos
14 sign this? And what he's -- If he took the Fifth about it, I
15 need to know -- give me what he said.

16 **MR. RUMLEY:** And your Honor, and how it comes in --

17 **THE COURT:** Show it -- What page?

18 **MR. RUMLEY:** Your Honor, and also the deposition of
19 Frazier, we asked him:

20 'Who do you believe forged your signature? Who do
21 you believe did it?'

22 **THE COURT:** And what did he say?

23 **MR. RUMLEY:**

24 'ANSWER: Probably the salesperson.'

25 And we said:

1 'QUESTION: Well, was it a common practice?'

2 **THE COURT:** Who was the salesperson --

3 **MR. RUMLEY:** And he said:

4 'ANSWER: It could have been anybody.'

5 **THE COURT:** Who was the salesperson in this one?

6 **MR. RANGEL:** Lance Kimball was the salesperson.

7 **THE COURT:** Have you deposed him?

8 **MR. RANGEL:** Yes, and there's --

9 **MR. RUMLEY:** Yes.

10 **MR. RANGEL:** -- a video deposition.

11 **THE COURT:** And what did he say?

12 **MR. RUMLEY:** He says that he also forged or he signed
13 Frazier's name. But he didn't take the Fifth.

14 **MR. RANGEL:** The focus -- I mean he said that the
15 Trevinos signed the document, your Honor. Focus on Moore with
16 respect to the notary practice, not with respect to the forging
17 of the signatures.

18 **THE COURT:** I got it, but I want to see what he said,
19 what was asked to him when he took the Fifth.

20 **MR. RUMLEY:** May I approach, your Honor?

21 **THE COURT:** Just give it to Ms. Scotch and tell her
22 what page.

23 **MR. RUMLEY:** Page 166.

24 **MR. RANGEL:** And this is my question.

25 **THE COURT:** I got your questions attached to the

1 thing.

2 MR. RANGEL: Correct. What page is that?

3 THE COURT: One sixty-six? I'm sorry, are you sure
4 it's 166?

5 MR. B. GUTIERREZ: I believe it's 167, your Honor.

6 THE COURT: Okay.

7 MR. B. GUTIERREZ: And beginning on line seven.

8 MR. RANGEL: Where's the depo? Where's the Moore
9 depo, the full depo? The full depo. The full depo.

10 MR. UNIDENTIFIED: The 2010; 2010, not the 2005.

11 MR. UNIDENTIFIED: 2005.

12 MR. RUMLEY: Page 161.

13 MR. RANGEL: 2010.

14 MR. B. GUTIERREZ: And then you go to page 169,
15 line --

16 MR. RUMLEY: It's actually page 168. This is a deed
17 of trust; it looks like January 7th, 2002.

18 'QUESTION: Did you forge any signatures?

19 ANSWER: Advice of counsel, take the Fifth.'

20 THE COURT: Wait, wait, wait.

21 (Pause - The Court reviews deposition transcript)

22 'QUESTION: Did you forge any of the signatures on
23 this page of this document?'

24 THE COURT: And that's the deed of trust?

25 MR. RUMLEY: Correct. And then we also asked about

1 John Wells because he testified that he forged John Wells'
2 signature to the mechanic's lien contract. They have a CMH
3 person signing them and he's testified in 2005 that he signed
4 his name, and now that's -- at page 170 we're asking him about
5 Wells' signature, and he takes the Fifth.

6 **MR. RANGEL:** I mean the focus is on the notaries,
7 your Honor, not --

8 **THE COURT:** No, it's -- No, the focus was on any
9 signatures on the deed of trust, and he took the Fifth to all
10 of them.

11 **MR. RANGEL:** And you can look --

12 **THE COURT:** And then he subsequently answered you.
13 So I don't see why you don't subpoena him, and I will order him
14 to testify because he can't take the Fifth and partially answer
15 like he did. That's not going to work. And you can bring in
16 Mr. Barroso and anything you want. That's the way that goes.

17 **MR. RANGEL:** May we confer?

18 **THE COURT:** Yes, you can.

19 **MR. RANGEL:** Okay.

20 **THE COURT:** You can't take a little bit of the Fifth.

21 **MR. RANGEL:** Judge, he was not my client.

22 **THE COURT:** I realize that. And he had a criminal
23 defense attorney who was very able.

24 **MR. B. GUTIERREZ:** But he was in 2005, he was their
25 client.

1 **MR. SOLTERO:** He was --

2 **MR. RANGEL:** He didn't take the Fifth in 2005, your
3 Honor. He answered the questions in 2005.

4 **MR. SOLTERO:** Judge, the *Harold* case says that when
5 you have subsequent -- (indiscernible) of subsequent testimony
6 here would be prior testimony.

7 **THE COURT:** Let me tell you this. That's not in this
8 case. The 2005 case is not before me. What I have is this
9 case right now, and he's taken a partial Fifth and then
10 answered all kinds of things about forged signatures after
11 that.

12 Now, if you want him to, I will compel his testimony
13 or he can sit in the marshal's office until he decides how to
14 proceed. But that, to me, is a partial -- you know, you can't
15 do that. You can say your name, you can say where you live,
16 and then you've got to be quiet if you want to take the Fifth.
17 You can't just go answering, you know, cherry-pick around.

18 **MR. RANGEL:** We will confer, your Honor.

19 **THE COURT:** Okay. Now I'll go look that up again,
20 but I'm quite stunned at this. I have done quite a bit of
21 criminal law in here.

22 **(Laughter)**

23 **MR. RANGEL:** We recognize that, your Honor.

24 **THE COURT:** Well, I recognize one when I see one.

25 **(Laughter)**

1 **THE COURT:** That is a Fifth Amendment claim.

2 **THE CLERK:** All rise.

3 **THE COURT:** We'll be in recess until -- how about
4 five of 1:00? Or do you-all want lunch? Is that it?

5 **(Laughter)**

6 **THE COURT:** One o'clock.

7 **(A recess was taken 12:16 p.m. to 1:06 p.m.)**

8 **(Parties and Counsel are present)**

9 **(Outside the presence of the jury)**

10 **THE COURT:** Okay. I'm wrong about the Fifth
11 Amendment. You can take it a question at a time. It's just
12 when we have people take it in here they do it outside the
13 presence of the jury. In the criminal trials, they do it for
14 everything.

15 **MR. RANGEL:** I have conferred with Mr. Rumley and
16 Mr. Gutierrez and that issue is not going to come up again this
17 afternoon.

18 **THE COURT:** Okay.

19 **MR. RANGEL:** We're going to see if we can work
20 something out at the end of the day and then report to the
21 Court. But that will not be an issue this afternoon.

22 **THE COURT:** Okay. Well, I was wrong.

23 **MR. RANGEL:** Judge, that's the first time.

24 **THE COURT:** I know. I mean, I just feel devastated.

25 **MR. LOCHRIDGE:** Can we take the afternoon off, your

1 Honor?

2 **THE COURT:** Yes. I have to work. You all can take
3 the afternoon off. How's that? As a just reward.

4 Ready? Would you bring them in?

5 **THE CLERK:** All rise for the jury.

6 **(Jurors enter courtroom at 1:07 p.m.)**

7 **THE COURT:** Thank you. You may be seated.

8 **MR. B. GUTIERREZ:** May I proceed, your Honor?

9 **THE COURT:** You may proceed.

10 **CROSS EXAMINATION (RESUMED)**

11 **BY MR. B. GUTIERREZ:**

12 Q Mr. Booth, before we recessed for lunch we had looked at
13 your testimony concerning that question that I believe we
14 agreed was a mistake. The court reporter apparently had made a
15 mistake, having you had answered it as if you had mentioned
16 "released the loan." Do you remember that?

17 A Yes, sir.

18 Q Okay. And I believe you testified that you looked at it
19 and you felt you hadn't said that and that was a court
20 reporter's mistake. Do you remember that?

21 A Yes, sir.

22 Q Okay. But what I showed you, that's what we were talking
23 about and this word here, the release of the loan, is where we
24 are agreeing that that was a mistake. It should have said the
25 "release of the land," right?

1 A Yes, sir.

2 Q And I think when we see the audio portion --

3 **THE COURT:** Hear the audio.

4 **MR. B. GUTIERREZ:** I'm sorry. Excuse me.

5 **THE COURT:** When we hear the audio.

6 **BY MR. B. GUTIERREZ:**

7 Q When we hear the audio, apparently we'll see that, you
8 know, apparently that was a mistake.

9 A Yes, sir. I think so.

10 Q But what I was asking you -- and I believe, your Honor,
11 that the Court has permission to publish this to the witness --
12 this prior testimony?

13 **THE COURT:** Yes, sir.

14 **BY MR. B. GUTIERREZ:**

15 Q And you've already seen the question. We showed it to you
16 before the lunch break and do you dispute that you have
17 testified under oath what is reflected there on line 22 and 23
18 of page 130 of your deposition?

19 A No, sir.

20 Q Is that true?

21 A That's what I said in the deposition, yes.

22 Q Well, what you said in your deposition is that you -- the
23 decision that you had made was to release any loan that had
24 land associated with it, right?

25 A No, sir. That's not the way I interpreted the question,

1 no, sir.

2 Q Excuse me, sir, but that was your testimony.

3 A Yes, sir. That was my testimony.

4 Q In fact, Mr. Rumley at that deposition continued a couple
5 of lines down and asked you what dates, what loans, was it just
6 one loan, was it just the Trevino loan? He didn't mention
7 Trevino -- he said, "Was it just one?" Do you remember that
8 question?

9 A No, sir.

10 Q And do you remember testifying that it was all outstanding
11 loans? Do you remember that?

12 A No, sir.

13 **MR. B. GUTIERREZ:** May I publish this to the witness,
14 your Honor?

15 **THE COURT:** Yes.

16 **BY MR. B. GUTIERREZ:**

17 Q We go down to page 131, line 1. Do you see the question
18 there by Mr. Rumley?

19 A Yes, sir.

20 Q Can you see your answer on line 2?

21 A Yes, sir.

22 Q Was your testimony truthful on that day?

23 A Yes, sir.

24 Q Did you, in fact, testify under oath that when you were
25 asked by Mr. Rumley what loans -- or excuse me -- what you were

1 releasing and you said, "All the outstanding loans"?

2 **MR. RANGEL:** I object, your Honor. That's not what
3 the testimony says.

4 **THE COURT:** I don't know what it says. Let me see
5 it.

6 **MR. B. GUTIERREZ:** May we approach?

7 **(Begin bench conference at 1:12 p.m.)**

8 **MR. RANGEL:** Questions 1 and 2. There's nothing in
9 there about releasing all loans.

10 **MR. B. GUTIERREZ:** You start at line 19, 130, and
11 continue.

12 **THE COURT:** What did you say? What was the question?

13 **MR. B. GUTIERREZ:** If that's what he had testified
14 and then he says, "No," that he didn't --

15 **MR. RANGEL:** No. He said, "Do you agree that you
16 testified that you were releasing all loans?"

17 **THE COURT:** That were land related.

18 **MR. RANGEL:** Right. He's releasing the land on all
19 loans, but he's not saying --

20 **THE COURT:** No. He just said, "It's my understanding
21 it was any loans that had land associated with it."

22 **MR. RANGEL:** We've already covered that. He's going
23 to the following -- line 1 on the following page.

24 **THE COURT:** Oh.

25 **MR. RANGEL:** If he asks him that question, he'll say

1 that's what's in the answer but he keeps changing the question
2 on him and saying, "That's what you testified to."

3 **THE COURT:** All outstanding loans (indiscernible).

4 **MR. B. GUTIERREZ:** Well, he testified to loans --
5 releasing all loans.

6 **THE COURT:** That's not what it says. My
7 understanding was that as it relates to land.

8 **MR. B. GUTIERREZ:** Exactly. Related to land.

9 **THE COURT:** Same thing.

10 **(End bench conference at 1:14 p.m.)**

11 **BY MR. B. GUTIERREZ:**

12 Q And we'll move on, Mr. Booth. But your testimony was that
13 you were releasing all loans related to land, right?

14 A Referring to that deposition, sir?

15 Q Yes. To the deposition that you gave in June of 2010.

16 A No, sir. What I said was outstanding -- loans that had
17 not been paid in full that had land. The land would be
18 released.

19 Q Do I need to show you this again? You say, "Any loan that
20 had land associated with it." Isn't that what you testified
21 to?

22 A Sir, I didn't see the question prior to that. I didn't
23 read the previous questions. I don't know the context. What I
24 said is written there.

25 Q It's the same question, sir. It's the same question

1 there, line 1 --

2 **MR. RANGEL:** Judge, asked and answered. He has not
3 backed away from the answers that are in the transcript and I
4 would object to trying to re-characterize it. He is not
5 contesting the answers that are in the transcript. It's a
6 different interpretation to it and I would object.

7 **MR. B. GUTIERREZ:** I'm just asking the witness, your
8 Honor, if he testified that when he was asked which --
9 concerning the releases -- which ones, "How did you decide
10 which ones were being released?" And he testified, he said
11 that any loan that had land associated with it.

12 **THE COURT:** Okay. Go ahead.

13 **MR. RANGEL:** The transcript speaks for itself, your
14 Honor. He's not --

15 **THE COURT:** There's no word in there about transfer.
16 Go ahead and ask the question.

17 **BY MR. B. GUTIERREZ:**

18 Q Do you see the question? Line 19, sir.

19 A I cannot see it on this screen.

20 **THE COURT:** Do you want to zoom it in a little bit on
21 that one?

22 Q It's on this screen.

23 A Okay. Are we talking about line 22?

24 Q No. I said line 19, sir, page 130.

25 A 130.

1 Q Beside the highlight. Do you see the highlight?

2 A I see the question on line 19.

3 Q Okay. And do you see your answer?

4 A Yes, sir. I do.

5 Q And what was the answer?

6 A My understanding is it's any loan that had land associated
7 with it.

8 Q That's what we've been trying to (indiscernible).

9 A Yes, sir. That's what I said.

10 Q It talks about loans and that's why I was asking you these
11 loans that you're talking about were the land-in-lieu program
12 loans that you all were marketing out at Store 214, right?

13 A Yes, sir. I was referring to the land-in-lieu
14 transactions.

15 Q Let me show you the -- we've looked at the retail
16 installment contract quite a bit now, but I wanted to ask you
17 one question concerning this retail installment contract, which
18 is Exhibit Number 8. Turn on the screen. And this is a retail
19 installment contract. And I wanted to ask you -- if we go to
20 page 4 of this retail installment contract -- who is this
21 individual here?

22 A Brenda Eden.

23 Q Yes, sir. Who's that?

24 A She works in Knoxville in the corporate office in the
25 sales processing area.

1 Q How long has she been there?

2 A Sir, I don't know how long she's been with the company,
3 but --

4 Q She was there in 2005, right?

5 A Yes, sir.

6 Q In fact, she was in Knoxville in 2005 on January the 5th,
7 2005, right?

8 A I believe she was. She was working for us then.

9 Q So, certainly, this document -- this retail installment
10 contract Number 8 -- could not have been given to my clients --
11 they've already testified they haven't received it -- but this
12 lady, wherever she is in Knoxville, signed it in Knoxville,
13 right? She had to have received that contract in Knoxville in
14 order for her to receive it -- in order for her to sign it,
15 right?

16 A Yes, sir.

17 Q So, as far as any assignment is concerned, certainly this
18 was not any notice to Mr. Flores or Mr. King that there had
19 been any assignment of this contract, retail installment
20 contract Number 8.

21 A I think it said that at the very top of the document when
22 they signed it.

23 Q Do you consider this to be the notice of assignment to
24 Mr. Flores and Mr. King?

25 A At least one of the notices. It says that on the retail

1 installment contract that it's going to be assigned to
2 Vanderbilt Mortgage.

3 Q That it's going to be assigned; does it say when it was
4 going to be assigned?

5 A No, sir.

6 Q Wasn't that supposed to be part of the notice to the
7 purchasers that you tell them when you're going to -- when the
8 assignment occurs?

9 A No, sir. I don't know of any requirement for that.

10 Q You're not familiar with the Retail Settlement Practices
11 Act?

12 A No, sir.

13 Q Other than this document Number 8 that I believe you now
14 claim was notice of the assignment, do you know of any other
15 written notice of assignment that was provided to my clients,
16 Mr. Flores and Mr. King, concerning that assignment? Have you
17 seen any other notice, any other letter that went and that was
18 furnished to my clients, Mr. Flores and Mr. King, concerning an
19 assignment of their contract to Vanderbilt Mortgage?

20 A No, sir. None other than the documents we saw yesterday
21 that reflected that Vanderbilt Mortgage was working with them.

22 Q What documents? Well, to be a service contractor and be
23 servicing the loan is one thing, right? I mean, that's
24 actually what Vanderbilt was doing; they were servicing this
25 loan.

1 A They also owned the loan.

2 Q Well, I mean, they were servicing the loan. That's the
3 only thing that was sent to Mr. Flores and Mr. King, that they
4 would be servicing their loan. That's why they got a payment
5 book, a booklet.

6 A They were doing that, yes, sir.

7 Q They were servicing the loan. But they never got any
8 notice from Vanderbilt or, for that matter, from CMH Homes that
9 this contract that they had executed, had signed on January
10 5th, 2002, had been assigned, right?

11 A I don't know if they did or not, sir.

12 Q Is there a reason why you're looking to counsel table --?

13 A No, sir. No. I'm just looking straight out, sir.

14 Q Now, this document here talks about collateral. I believe
15 Mr. Rangel went to the last page and -- talks about collateral
16 there. Do you see that?

17 A Yes, sir.

18 Q The collateral according to the questions that were asked
19 by counsel Mr. Rangel was supposed to be the manufactured home,
20 right?

21 A Yes, sir.

22 Q And some land, right?

23 A Yes, sir.

24 Q Did you provide any notice to the landowners that there
25 had been some collateral pledged on this note? I mean, I'm

1 asking you --

2 A The deed of trust and the builder's mechanic's lien.

3 Q Well, how about notice of this contract? Did they get
4 notice? Did the landowners get any notice?

5 A I think there's a reference to that in the documents.

6 Q In what documents?

7 A In the builder's mechanic's lien and the deed of trust.

8 Q Have you studied the builder's and mechanic's lien
9 contract?

10 A Yes, sir.

11 Q What does it say?

12 A I don't recall everything it says, but I think there was
13 some reference there to the indebtedness.

14 Q Did you even send the Trevinos a copy of that mechanic's
15 lien contract that you now claim they signed?

16 A Sir, they should have received a copy at the time they
17 signed it.

18 Q Is that what you believe?

19 A Yes, sir. That was the process.

20 Q Sir?

21 A That was the normal process. They would have received it.

22 Q How about the deed of trust?

23 A The same thing, yes, sir.

24 Q In spite of testimony that you've heard from other
25 witnesses?

1 A I read Mr. Lance Kimball's testimony and he testified that
2 they were there. They signed them.

3 Q In fact, Mr. Kimball said that they were there on January
4 the 5th, right?

5 A I don't remember the date.

6 Q They were there at the closing. Wasn't that his
7 testimony?

8 A I don't remember the exact testimony. I just remember he
9 said he met them and they signed the documents.

10 Q Except that those documents had a different date, right?

11 A Yes, sir. I've seen the documents. They were dated two
12 days later.

13 Q One of your policies and you were talking about good
14 policies earlier this morning and one of the policies that you
15 had in place back in 2002 was a requirement that your sales
16 associates make an audio recording of every closing, right?

17 A Yes, sir.

18 Q And, in fact, you've testified to that under oath, right?

19 A Yes, sir.

20 Q Did you know that a request has been made of the audio
21 closing of this transaction and Vanderbilt Mortgage, your
22 company, has told us that they had been unable to locate the
23 tape.

24 A Yes, sir. That's my understanding.

25 Q Have you made any effort to locate it?

1 A Yes, sir. We sent a team in there to collect those tapes
2 and to send them to Knoxville.

3 Q What happened to it?

4 A I don't know.

5 Q Do you think that if we had that tape it would clear up a
6 lot of questions as to who was there and who was not there on
7 January the 5th?

8 A I think it would indicate who was there on the 5th; not
9 necessarily on the 7th.

10 Q Well, at the closing.

11 A There was not just one closing. There was a closing with
12 the buyers of the home. There could have been subsequent
13 meetings with the folks that were pledging the land.

14 Q Where is that tape?

15 A I don't know.

16 Q So, there's more than one tape, then, or what?

17 A Sir, I don't know. I wasn't there. That was ten years
18 ago.

19 Q Should there be more than --

20 A Sir?

21 Q Should there be more than one tape -- audio closing tape?

22 A Not necessarily, no.

23 Q So, you would record one but you wouldn't record the
24 other?

25 A Typically, they'd all be recorded at the same time.

1 Q You talked about hindsight? "We should have sent and we
2 should have notified the landowners of the releases and the
3 customers of the releases." Do you remember that testimony?

4 A Yes, sir.

5 Q What's preventing you from doing it now? This hindsight
6 that you're talking about. When do you plan to do it?

7 A That's not my responsibility, sir.

8 Q How about this documents that are at the courthouse? We
9 have a deed of trust, for example. This is just on the
10 (indiscernible). A deed of trust; we have a mechanic lien
11 contract that you know we are claiming are forged or
12 fraudulent. You understand that, right?

13 A I'm saying there were questions concerning --

14 Q But you understand what our allegations are?

15 A I understand the allegations, yes, sir.

16 Q And, of course, you've released not only this deed of
17 trust, not only this mechanic lien contract, but hundreds of
18 them, right?

19 A Yes, sir.

20 Q What have you done concerning the actual document that's
21 there at the courthouse? Are you going to or are you planning
22 to take another step, maybe visit with the official that is in
23 custody of the official property records from the different
24 counties, where this suspect documents -- we can call them
25 suspect, because you've already told us you don't know which

1 are bad and which are good, so you released them all -- have
2 you decided what are you going to do with those, and I'll just
3 call them suspect documents? Do they stay there for eternity?

4 Are you going to try to get together with some public
5 officials and say, "You know what? We released something but
6 we think we need to purge those so that you can get your
7 records straight and remove all of this tainted, suspected
8 documents." Do you plan to do anything like that?

9 A Sir, my understanding is that when we released the liens,
10 the builder's mechanic lien --

11 Q Yes, sir.

12 A -- and the deed of trust lien, that those were received
13 back in Knoxville. Vanderbilt received those, as I understand
14 it, and they were filed in the files and they will be returned
15 at such time as the loans are paid.

16 Q Mr. Booth, I believe those are all the questions I have,
17 sir. Thank you.

18 A Thank you.

19 **MR. B. GUTIERREZ:** That's all the questions I have.

20 **THE COURT:** Thank you.

21 **MR. RANGEL:** May I proceed, your Honor?

22 **THE COURT:** You may.

23 //

24 //

25 //

1

REDIRECT EXAMINATION

2

BY MR. RANGEL:

3

Q Mr. Booth, do you remember this morning when Mr. Rumley presented that deposition testimony and suggested you weren't telling the truth when if the word loan appeared in the court record as opposed to land?

7

A Yes, sir.

8

Q And what did you tell Mr. Rumley.

9

A I told him I didn't believe I said that; that that was incorrect.

10

11

Q And the deposition -- your deposition that was taken on that day -- there was a court reporter taking down what you were saying, right?

13

14

A Yes, sir.

15

Q But additionally there was a videographer that was taping your sound and your picture, correct?

16

17

A Yes, sir.

18

MR. B. GUTIERREZ: Your Honor, we object to this line of questioning. I believe we stipulated that was an error. I felt I had cleared it up with Mr. Booth and so our objection is relevancy with respect to this line of questioning.

19

20

21

22

MR. RANGEL: Judge, the stipulation does not take away what was said this morning and we want to show the jury the audio that makes it clear that he said land. Just because they stipulated in order to say that, I think the jury's

23

24

25

1 entitled to see and hear him explain why Mr. Booth was so
2 adamant that he hadn't said that. It's very short, your Honor.

3 **THE COURT:** Go ahead.

4 **MR. RANGEL:** I would ask the tech person to play the
5 audio of the question and answer.

6 **(Playing excerpt of David Booth deposition)**

7 "Q All right, sir. Are you here on behalf of the
8 corporation with respect to the lien releases that
9 were filed in the fall of 2005 related to Store 214?

10 "A Yes, sir. The decision to release the land."

11 Is that true and correct representation of what you
12 said that day?

13 A Yes, sir.

14 Q And what was it that you said with respect to what you
15 were releasing?

16 A I said "release the land."

17 Q I will have now the tech person put up the written
18 transcript of that question and answer.

19 "All right, sir. Are you here on behalf of the
20 corporation with respect to the lien releases that
21 were filed in the fall of 2005 related to Store 214?

22 "Yes, sir. The decision to release the land."

23 Is that still your testimony, Mr. Booth?

24 A To release the land? Yes, sir.

25 Q And when Mr. Gutierrez presented you with other questions

1 and answers, is your testimony that the intention was to
2 release the land only.

3 A My intention was --

4 **MR. B. GUTIERREZ:** Objection, your Honor. Mr. Booth
5 has testified --

6 **THE COURT:** Sustained.

7 **BY MR. RANGEL:**

8 Q What was your intent in filing the builder's and
9 mechanic's lien release and the deed of trust release?

10 A To release the land on all transactions that were land-in-
11 lieu.

12 Q Given the nature of the problem that had been identified
13 at Sales Center 214, would it make any sense to release the
14 indebtedness?

15 A No, sir.

16 Q Why not?

17 A Because there was no controversy surrounding the retail
18 installment contracts that had been signed by the homeowners.
19 It was simply the controversy, as I understood it, all revolved
20 around the land transactions, the land that was pledged as
21 partial collateral.

22 Q In fact, with respect to the retail installment contract
23 that is Exhibit 1 here, involving Mr. King and Mr. Trevino, did
24 you hear them admit that they had signed their signatures to
25 that contract?

1 A Yes, sir.

2 Q And there was no dispute about that.

3 A No dispute about it.

4 Q And let's pull up the retail installment contract.

5 Mr. Gutierrez asked you questions about when the
6 assignment would be effective. Is there something in the first
7 paragraph that addresses that?

8 A Yes, sir. It says that the seller will submit his
9 contract to Vanderbilt Mortgage and Finance and, if approved,
10 the contract will be assigned to Vanderbilt Mortgage and
11 Finance.

12 Q And was, in fact, this contract approved by Vanderbilt?

13 A Yes, sir. The deal was funded.

14 Q And at some point, did Mr. King and Mr. Flores receive
15 payment booklets from Vanderbilt so they could make their
16 payments to Vanderbilt?

17 A Yes, sir.

18 Q And did they do that according to the testimony that you
19 heard?

20 A Yes, sir. That's what I heard.

21 Q I also would like to pull up CP-154, page 8.

22 Was this included in the package that was given to
23 Mr. King and Mr. Flores?

24 A That's what I heard yesterday, yes, sir.

25 Q And is this notice to Mr. King and Mr. Flores that the

1 contract and the indebtedness had been assigned to Vanderbilt?

2 A Yes, sir. I think so.

3 Q And is it your understanding, based on what you heard,
4 that all of the payments that Mr. King and Mr. Flores made
5 starting in March of 2002 went to Vanderbilt?

6 A Yes, sir.

7 Q When you filed the deed of trust and the builder's and
8 mechanic's lien, what was your intent in doing so?

9 A To record the lien on the land that had been pledged as
10 partial collateral in this deal.

11 Q In filing those, did you have any intent to cause any
12 financial harm or injury to Mr. and Mrs. Trevino?

13 A No, sir.

14 Q Were Mr. and Mrs. Trevino signers on the retail
15 installment contract?

16 A No, sir.

17 Q Were they obligated to pay that debt under the retail
18 installment contract?

19 A No, sir.

20 Q What was the extent of their obligation?

21 A Their land had been pledged. So, their land could have
22 been at risk.

23 Q Before the builder's and mechanic's lien release and the
24 deed of trust release were filed, was there ever any attempt to
25 collect any money from the Trevinos?

- 1 A No, sir.
- 2 Q Was there ever any attempt to foreclose on that land?
- 3 A No, sir.
- 4 Q Has Vanderbilt ever attempted to foreclose on the land?
- 5 A No, sir.
- 6 Q Once the releases were filed in October of 2005, was there
- 7 any remaining lien on that land?
- 8 A Not regarding this transaction; not to my knowledge.
- 9 Q The builder's and mechanic's lien had been released and
- 10 the deed of trust lien had been released?
- 11 A That's correct.
- 12 Q And to this day, that's where it stands?
- 13 A Yes, sir.
- 14 Q Those liens have been released on that land?
- 15 A Yes, sir.
- 16 Q You understand, Mr. Booth, that this litigation started
- 17 when Vanderbilt filed an action to re-possess the mobile home
- 18 involved?
- 19 A Yes, sir.
- 20 Q And did Vanderbilt sue the Trevinos?
- 21 A No, sir.
- 22 Q Who has Vanderbilt sued in this case?
- 23 A Mr. Flores and Mr. King, I guess, that had signed on the
- 24 retail installment contract.
- 25 Q Has either --

1 **THE COURT:** Sorry. The light wasn't coming on.

2 **BY MR. RANGEL:**

3 Q -- Mr. and Mrs. Trevino are parties in this case -- it's
4 your understanding that they are parties in this case?

5 A The Trevinos? Yes, sir.

6 Q Has either Vanderbilt, CMH Homes or CHI sued the Trevinos?

7 A No, sir. Not to my knowledge.

8 Q Is it your understanding that it is the Trevinos who have
9 sued?

10 A Correct.

11 Q With respect to the notaries, what expectation did you
12 have as far as the notaries at the Sales Center 214 with
13 respect to complying with whatever rules and regulations that
14 the state law requires from them?

15 A I thought every notary at the time they became a notary,
16 they applied, they were appointed as notaries. I thought they
17 understood what their obligations were and in everything
18 surrounding the notary practice it was their responsibility to
19 exercise that in a proper way and to be responsible as
20 notaries.

21 Q And the signatures of Mr. Flores and Mr. King on the
22 retail installment contract, were those signatures notarized?
23 Did they have to be notarized?

24 A No, sir. They did not.

25 Q Thank you, Mr. Booth.

1 A Thank you, sir.

2 **RECROSS EXAMINATION**

3 **BY MR. RUMLEY:**

4 Q Just a few more questions. One of the competitive
5 advantages that Clayton Homes had over other manufactured
6 companies is they owned their own bank, right?

7 A Yes, sir.

8 Q And that was something that was marketed, that your sales
9 people would market to people is, "We own our own bank so we
10 can do things that other people can't do." True?

11 A I've heard the statement, "We own our own bank."

12 **MR. RUMLEY:** Your Honor, I'd offer Defendants'
13 Exhibit 218.

14 **MR. RANGEL:** No objection, your Honor.

15 **THE COURT:** 218 is admitted.

16 **(Defendants' Exhibit Number 218 was received in evidence)**

17 **BY MR. RUMLEY:**

18 Q Thank you. Mr. Booth, let me ask. Have you seen this
19 document before? "The CMH Difference"?

20 A I think I have.

21 Q We talked about it during your deposition?

22 A Yes, sir.

23 Q Okay. If we look at -- I don't know if you want to call
24 it the motto or CMH Difference, "We must understand the value
25 of what we have. We must not take for granted what we have.

1 We must protect what we have. And we must tell others what we
2 have." Do you agree with that proposition?

3 A Yes, sir.

4 Q If we go to the next page, one of the differences that you
5 all were able to offer was -- and we talked about this --
6 compensation program. Managers 40 to 50 percent, where your
7 competitors, the managers only got 28 percent. Do you see
8 that?

9 A Yes, sir.

10 Q Right? And you agree with that, right?

11 A Yes, sir.

12 Q Sales people, up to 25 percent, no penciling. Would you
13 agree with that?

14 A Yes, sir.

15 Q If we come down, the things we didn't talk about is in
16 addition to receiving the money that we talked about, the
17 compensation we talked about earlier, you all had programs
18 where you would take your top salesman to Mexico or Hawaii or
19 vacation spots, right?

20 A Yes, sir.

21 Q They were rewarded with other rewards other than
22 compensation, right?

23 A Yes, sir. They were top achievers.

24 Q And one of the things that you all would do is have a
25 sales academy where the sales people would go to the academy,

1 right?

2 A Yes, sir.

3 Q And those individuals would go there and they would share
4 their ideas on how they were able to successfully sell homes,
5 right?

6 A It was primarily training that we offered, but they
7 visited with the sales people while they were there.

8 Q And John Wells, Ben Frazier, Robin Moore, Lance Kimball;
9 do you know whether or not they all went to this academy and
10 shared with others how they were able to be so successful in
11 selling homes in 2002?

12 A I don't know if they all went. I know that some of them
13 probably went.

14 Q But you all would go in groups and you would share ideas,
15 right?

16 A Yes, sir. We'd have about 30 sales representatives at a
17 time.

18 Q And if we come down here, team VMF, we have the statement,
19 "We own the bank," right?

20 A Yes, sir.

21 Q And because -- actually, does CMH own the bank?

22 A No, sir.

23 Q Clayton Homes, Inc. owns the bank, right?

24 A That's correct.

25 Q We talked a little bit with Kim Russell about this bad

1 cop/good cop, bad guy/good guy?

2 A Yes, sir.

3 Q Your sales people, store manager, would actually go and
4 help collect on the debts, right?

5 A Yes, sir. They would try to make contact.

6 Q And one of the things -- not only did you provide
7 commissions to encourage sales of homes, but what you also did
8 as a company is you placed financial consequences on the store
9 if their customers didn't pay, correct?

10 A Yes, sir.

11 Q And so, in other words, if John Doe didn't make their
12 payments, not only did it hurt Vanderbilt, who according to
13 your testimony they owed the debt to, but it also affected the
14 store, right?

15 A Yes, sir.

16 Q So, if they didn't make their payment, the store, John
17 Wells, got less money, right?

18 A Yes, sir.

19 Q We also heard from Ms. Russell yesterday, or maybe it was
20 this morning, that this company has a zero tolerance for fraud
21 and forgery. Is that true?

22 A Yes, sir.

23 Q Is there a zero tolerance policy for fraud and forgery
24 with this company regardless of the circumstances?

25 A Sir, there is a zero tolerance for fraud and forgery in

1 this company.

2 Q Do you remember what your answer was in your deposition?

3 A Yes, sir.

4 Q What was your answer?

5 A That you had to look at individual situations and make
6 sure that you interpreted what had happened correctly.

7 Q And so your testimony is different today?

8 A I think that if it's confirmed that there was fraud and
9 forgery, then it's zero tolerance.

10 Q Sir, there's either a zero tolerance for fraud and forgery
11 or there's a policy of it depends on the circumstances. At
12 this company, is there a zero tolerance for fraud and forgery?

13 A Yes, sir, there is today.

14 MR. RUMLEY: No further questions.

15 THE COURT: Mr. Gutierrez?

16 MR. B. GUTIERREZ: Yes, your Honor. I think, with
17 your permission, I'm wondering if it would be easier if we'd
18 pull up Exhibit 154. Is that okay?

19 THE COURT: Sure.

20 MR. B. GUTIERREZ: Could we -- 154, I believe it's
21 page 8.

22 RE CROSS EXAMINATION

23 BY MR. B. GUTIERREZ:

24 Q I think I just have maybe a couple of questions and that
25 pertains to the question of the assignment, a question of

1 whether or not there was an effective assignment to my clients,
2 Mr. Flores and Mr. King. Okay?

3 A Yes, sir.

4 Q One of the questions -- could we have the entire document?

5 One of the questions, I believe, from Mr. Rangel was
6 -- and I might have misunderstood that -- are you claiming that
7 this document, page 8 of 154, is a notice of assignment?

8 A No, sir.

9 Q Okay. This is not --

10 A I think it's just evidence of the assignment.

11 Q No. The question is, is this a notice of assignment to my
12 clients, sir, Mr. Flores and Mr. King?

13 A Maybe not officially, no, sir.

14 Q Okay. That's all the questions I have. Thank you.

15 **THE COURT:** Mr. Rangel? Go ahead.

16 **FURTHER REDIRECT EXAMINATION**

17 **BY MR. RANGEL:**

18 Q Okay. Mr. Booth, given that from the first payment,
19 Mr. King and Mr. Flores sent the payments to Vanderbilt for
20 seven years, did that give them notice that there had been an
21 assignment of the debt and the contract to them?

22 A Yes, sir.

23 **MR. RANGEL:** No further questions.

24 **MR. RUMLEY:** No more questions, your Honor.

25 **THE COURT:** Thank you, sir. You may stand down.

Shelton - Direct / By Mr. Lochridge

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1 Call your next witness.

2 MR. LOCHRIDGE: Your Honor, we'd call Michael
3 Shelton.

4 (Pause)

5 MICHAEL SHELTON, PLAINTIFFS' WITNESS, SWORN

6 May I proceed, your Honor?

7 THE COURT: Yes, sir.

8 MR. LOCHRIDGE: Thank you very much.

9 DIRECT EXAMINATION

10 BY MR. LOCHRIDGE:

11 Q Would you introduce yourself to the jury, please?

12 A Yes. My name is Michael Shelton and I'm currently the
13 remarketing processing manager with Vanderbilt Mortgage and
14 Finance.

15 Q Tell me a little bit about yourself. Where were you born
16 and raised?

17 A I was born in Clinton, Tennessee; raised there until about
18 the age of 20. But I lived in the same general area.

19 Q Is that in the Knoxville area?

20 A It is.

21 Q All right, sir. And you're married?

22 A Yes, sir.

23 Q Any kids?

24 A Yes, sir. I've got one son, nine years old.

25 Q Now, where did you go to college?

1 A I went to college at the University of Tennessee in
2 Knoxville.

3 Q And did you graduate from there?

4 A Yes, sir, graduated from there.

5 Q Did you get -- what kind of degree did you get?

6 A I've got a degree in operations management.

7 Q Can you tell us just a little bit about what that means?

8 A It's a business degree. It's basically my study was in,
9 you know, managing teams.

10 Q Managing the processes of a company; that sort of thing?

11 A Yes, sir. Managing processes, production, that type of
12 thing.

13 Q When did you graduate from college?

14 A I graduated in 1997.

15 Q When did you go to work for Vanderbilt?

16 A Same year, 1997.

17 Q Right out of school?

18 A Yes, sir.

19 Q All right. And walk us through the jobs you've had since
20 you've been at Vanderbilt now 13 years.

21 A Yes, sir. I started out with Vanderbilt as an account
22 representative. I did that for about a year. It's a job where
23 we would call on delinquent accounts. After that, I spent a
24 year as a land home auditor for a refinance department. And
25 basically I would audit the files that would come into us.

1 For about the next three years after that I was a
2 credit manager, which is where I would review the credit
3 information, make credit decisions to approve and decline
4 loans. For the next four years, I was the document services
5 manager. I managed a number of departments, but basically it
6 was the mail room. It was a document center. We have an
7 imaging department where we have images on our servicing system
8 and there was a department that does lien releases and lien
9 assignments.

10 Q Let me stop you right there.

11 A Sure.

12 Q So, that period of time where you were doing this document
13 control, what were the years that you were doing that?

14 A It would have been from 2003 to 2007 -- early 2007.

15 Q Well, there's some land releases here that are dated 2005.
16 The jury's heard a lot about it. And you were in charge of the
17 document control at that point in time? Is that right?

18 A Yes, sir. I was in charge of the department that
19 processed those releases.

20 Q And then you left that department in 2007 and what do you
21 now do for Vanderbilt?

22 A Now I work as the remarketing processing manager and
23 basically I manage a few support departments for a sales team.
24 You know, we research taxes; we process title work; we pay
25 invoices, that type of thing.

1 Q All right. I want to go back to the 2003, 2007 time frame
2 or in particular the 2005 time frame.

3 A Yes, sir.

4 Q There you were document manager. Was that what you called
5 your title?

6 A Yes, sir. That's correct.

7 Q Now, were you responsible in those days for where, for
8 example, original documents were kept?

9 A Yes, sir. At the time, we would hold our original
10 document files in the vault and it was held by our document
11 control department, which I managed.

12 Q When you talk about original documents, are you talking
13 about original deeds of trust, original retail installment
14 contracts, original builder's and mechanic's lien contracts,
15 all of the actual signed, original documents?

16 A Yes, sir.

17 Q And you kept them in a vault?

18 A Yes, sir.

19 Q Is that a vault like you see in the movies?

20 A It's a little different. It doesn't look quite like a
21 bank vault, but we do have a locked and secured door. And
22 basically, when you walk in there it's rows of files.

23 Q All right. Now, is one of the departments that you were
24 in charge of in the 2005 time frame something called a paid out
25 department?

1 A Yes, sir.

2 Q Okay. Would you tell the jury what the paid out
3 department is, please, sir?

4 A Well, the paid out department, we did a few things. We
5 released land; we would release liens on titles. We would also
6 do lien assigns for any loans purchased by Vanderbilt we would
7 assign to Vanderbilt. So, we did those type of things.

8 Q Okay. And in that period of time, were you responsible
9 for having prepared and keeping track of releases of deeds of
10 trust, for example?

11 A Yes, sir.

12 Q And were they prepared in your department?

13 A Yes, they were.

14 Q Could you put Exhibit 13 on the screen, please? Or
15 Exhibit 12 on the screen? Just call up the top part of it.

16 This is a deed of trust release that the jury has
17 seen dated October of 2005. Now, is this a form document that
18 Vanderbilt has?

19 A It is, sir. It's a standard form we use.

20 Q They kept in a computer and you called it up and punched
21 "print" and they print out?

22 A Yes, sir. The deed release clerks would fill in some of
23 the information, but it's a standard format.

24 Q Now, are you one of the people that was authorized to sign
25 the releases of deeds of trust and builder's and mechanic's

1 lien back in the 2005 time frame?

2 A Yes, sir.

3 Q And what is your understanding that a deed of trust
4 release such as this is releasing?

5 A The deed of trust release releases the land. There's a
6 deed of trust that's filed whenever the loan is originated and
7 so that when we complete that release it releases it at the
8 county, releases the land.

9 Q Let's go to Exhibit 13 on the screen, please.

10 That's a mechanic's lien release. Is that another
11 form document that is prepared there at Vanderbilt?

12 A Yes, sir.

13 Q And is that similar to the deed of trust in the sense that
14 it's on the computer and it's a form document?

15 A Yes, sir. In that sense it's similar.

16 Q All right. And when you would sign mechanic's lien
17 releases, what was your intent in doing so?

18 A My intent is to release the land.

19 Q All right. Well, generally speaking, these would be
20 involved somewhat with a retail installment contract, wouldn't
21 they?

22 A Well, they would be filed after the loan originated.
23 There'd be a retail installment contract, deed of trust,
24 mechanic's lien; but they're actually separate documents and
25 they do separate things.

1 Q Let me ask you something.

2 Could you just highlight the upper left hand corner
3 there? It's got the re. There we go. And it's got a number
4 646307.

5 What does that number signify?

6 A It's the loan number for the account -- customer's
7 account.

8 Q And is that number assigned to a loan by a customer? Is
9 that correct?

10 A Yes, sir, it is.

11 Q Okay. Could you go back to Exhibit 12, please? And call
12 up the same corner. No, bring the corner up where it shows the
13 file reference. There we go.

14 And there you've got the same 646307 number and it's
15 Cesar Flores' name. Do you see that?

16 A Yes, sir.

17 Q Now, what does that indicate for you -- for Vanderbilt
18 there internally?

19 A Well, internally, we use the loan number to file the
20 account. It shows the account rep that's working it; you know,
21 what loan to pull up in the system when they file it in the
22 vault; it shows where they filed it in the vault, those type of
23 things.

24 Q By referring to this file marker, if you will, are you
25 intending at all to -- when you file -- when they sign a deed

1 of trust release or a builder's and mechanic's lien release to
2 release all the obligations that might be associated with that
3 file?

4 A No, sir. And just to make clear, the deed of trust
5 release, the only thing that it does is it releases the deed of
6 trust that was filed to secure the lien, so it only releases
7 the land.

8 Q Okay. Now, going back into the 2005 time frame, are you
9 aware of a number of deed of trust releases and builder's and
10 mechanic's liens releases that were filed -- that arose out of
11 land-in-lieu transactions at the store in Corpus? Store 214?

12 A Yes, sir. I'm aware of that.

13 Q And did you have a hand in printing out some of the forms
14 that would be used? Was that done in your department?

15 A Yes, sir. Our department handled it. What I did was I
16 gave our instructions to the supervisor to release the land on
17 any of the loans from Home Center 214 and basically the
18 supervisor took it from there. Deed release clerks prepared
19 the documents, sent them to the county to be filed.

20 Q And did you sign some of those documents?

21 A Yes, sir.

22 Q But you didn't -- you weren't -- it was Mr. Jordan that
23 signed the documents in this particular case. Is that right?

24 A Yes, sir. That's correct.

25 Q Let's pull out the part in Exhibit 12, I believe, the

1 builder's and mechanic's lien release.

2 I want to focus on one thing -- two things. First of
3 all, this is signed by CMH Homes, Inc. Is that right?

4 A Yes, sir.

5 Q And what was their role in this transaction with Flores
6 and King, or with any customer?

7 A Well, CMH Homes, Incorporated was the dealer, so that the
8 buyer, the person purchasing the home, they would buy the home
9 from the dealer. And then, Vanderbilt was the financier.

10 Q Well, it says here -- if you could just highlight the page
11 in full length -- and it says, "CMH Homes has been paid in
12 full." Do you see that?

13 A I do.

14 Q What's your understanding of what that means?

15 A Well, my understanding of that is basically when the
16 person buys the home from the dealership the dealership assigns
17 that lien to Vanderbilt and the buyer completes a promise to
18 pay on the retail installment contract to enter into the loan
19 agreement with Vanderbilt. So, what Vanderbilt does is they
20 pay off the dealer, CMH Homes, Incorporated, and that leaves
21 the transaction between the customer and Vanderbilt.

22 Q So, CMH Homes is paid in full, but it's paid by
23 Vanderbilt, not the customer. Is that correct?

24 A That's correct.

25 Q Now, you have a process -- well, let me go back to 2005.

1 You signed some of the releases of the deeds of trust and the
2 builder's and mechanic's lien releases, but not the -- do you
3 recall what the general instruction was to you to get these
4 releases printed up and signed and filed?

5 A Yes. The instructions I received were that we wanted to
6 release the land on all the loans that were from Home Center
7 214 and so I gave the instructions to the supervisor and they
8 completed the releases.

9 Q Now, do you have a manual or a process for what you're
10 supposed to do when you have a partial release such as this
11 where you're only releasing part of the collateral versus a
12 paid in full -- the contract -- the retail installment contract
13 -- has been paid in full and releases are filed at that point
14 in time? Are there procedures for what you do with the
15 release?

16 A Yes, sir. We had a manual. It's the paid out manual and
17 it basically tells the people that are doing the work, you
18 know, how they're supposed to process that. And in this
19 particular case, because we're going to continue securing the
20 home and the loan's going to remain active, the instructions
21 were to send the deed of trust release and the mechanic's lien
22 contract release to the county, have them filed and then once
23 they were returned we would send them to the vault.

24 Q Could you pull up Exhibit 59, please?

25 Is this the paid out department manual you're

1 referring to? The first page of this exhibit is 9631 --
2 Exhibit 59?

3 A Yes, sir.

4 Q Okay. Could you flip back to page 9728? And highlight
5 the top part. Okay.

6 "Partial releases on active loans"; what does that
7 mean?

8 A Well, it's similar to the situation we're talking to.
9 It's where we were going to release, you know, either only a
10 portion of the land or we're going to release the land but
11 we're still going to continue to secure the home.

12 Q Can you give me some examples from your experience of when
13 you would release just some of the land or some of the
14 collateral, yet keep the retail installment contract in place?

15 A Yes. I can give you some general scenarios. There were
16 times where if the customer had paid well enough and they
17 basically requested us, they wanted to have the land released
18 or even a portion of the land released; you know, maybe they
19 wanted to cut out a piece for a family member or something like
20 that, as long as it was approved by the appropriate manager,
21 then we would prepare those releases in my department for that.
22 And those would be an example of a partial release.

23 Or, you know, like in this scenario where we decided
24 to release the land, you know, basically they would do that, as
25 well. We would secure the home but release the land.

1 Q Okay. Now, these are standard operating procedures for
2 what to do with a partial release?

3 A Yes, sir.

4 Q Okay. And the first is that they have to be authorized by
5 the credit manager. Is that correct?

6 A Yes, sir.

7 Q And then they have to have a property description,
8 correct?

9 A Yes, sir.

10 Q And the third is there must be a survey done to describe
11 what property is being released. Can you tell me when that
12 would happen, because we don't have a survey here?

13 A Yes, I can. What would happen is if you decided you were
14 going to release all of the land, you didn't need a survey
15 because you would use the same legal description that was
16 completed at the time of closing. But if you decided to, say,
17 you wanted to take ten acres and then cut out five acres of
18 that, you'd need to do a survey. And that way, you'd have a
19 good legal description for the five acres that you wanted to
20 retain and also, you know, the five acres that you wanted to
21 release.

22 Q All right. And then, the next it says -- let's highlight
23 this, please. This is what you do with a partial release like
24 we had in this case. "Do not mail the recorded document to the
25 customer. It's sent to the investor to be put with the deed of

1 trust and/or mortgage." What does it mean by the "investor"?

2 Is that the investor file?

3 A It is. It's the original document file that's held in the
4 vault. So, in a scenario like this when they get the deed of
5 trust release back, it's recorded, they would send it to the
6 file to be held in the vault.

7 Q Now, in 2005, when you were told to prepare a bunch of
8 these releases, were you given any specific instructions one
9 way or the other about how the releases should be filed and
10 sent back to the investor file or anything like that?

11 A No, sir. The only instructions we really received is
12 that, you know, these are active loans. We're going to retain
13 the security of the home and we want to release the land.

14 Q Was any directive given to you that you want to try to
15 keep these releases secret or anything like that?

16 A No, sir.

17 Q You simply followed the standard operating procedure as to
18 how you handled those releases? Fair enough?

19 A Yes, sir.

20 Q Now, I want to go through the process that you all have
21 when you actually do have a paid in full retail installment
22 contract; when it's been paid off and completely discharged.
23 All right? Can we -- do you have a system for how you handle
24 that situation?

25 A Yes, sir.

1 Q What is it called? Is it called "paid out"? Or how do
2 you refer to it internally?

3 A I gotcha. Are you referring to the way the system
4 reflects it?

5 Q The way the system works. What's the first thing that has
6 to happen?

7 A I gotcha. Well, whenever a loan is paid out in full, the
8 first thing that happens is the loan is coded "paid out." We
9 have different statuses of the account that are on the system
10 and what it does is it lets the team member, whoever goes into
11 that loan, it lets them look at the loan and determine real
12 quickly, you know, what the status of the loan is -- you know,
13 active or paid out or that type of thing.

14 Q Could you put Exhibit Clayton CP-11 on the screen, please?

15 And what I'm going to do is walk you through your
16 process here to see if we can find any indication that
17 Vanderbilt intended to release the retail installment contract
18 as paid in full, okay?

19 A Yes, sir.

20 Q Now, this looks like a computer screen that you have
21 there. Could you tell the jury what we're looking at in
22 Plaintiff' Exhibit 11?

23 A Yes, sir. What you're looking at is this is a screen
24 shot. So, when the representative is in our system, you know,
25 this is what they see. It's got some of the loan information.

1 Q It's pulled up as of October the 6th, 2009.

2 A Yes, sir.

3 Q Okay. And is that about the time this lawsuit was in
4 play?

5 A I believe so.

6 Q Okay. And then, it's got the name of the account. Who's
7 the name?

8 A Cesar Flores.

9 Q Is that the same name that we saw up in the left hand
10 corner of one of those lien releases?

11 A Yes, sir, it is.

12 Q All right. And then, it's got the number. Is that the
13 same number that we saw up there with those lien releases
14 earlier?

15 A Yes, sir, it is.

16 Q Okay. So, now we've it identified. Now, it says here
17 "legal action." What does that signify to you internally at
18 Vanderbilt?

19 A Well, in this case, due to what's going on here today in
20 court, that's why this is coded as a legal action. It
21 basically is an indicator to, you know, any team member that
22 had access to get into that that, you know, that it's an
23 account that's in legal status.

24 Q Now, if this account had been paid 100 percent and
25 Vanderbilt had considered it paid in full, what would we see

1 there where it says legal action?

2 A Instead of legal action, it would show paid out and it
3 would be in bright red letters.

4 Q Okay. Now, let's go over here where it says "DOT 1." Can
5 you highlight that, please?

6 Now, what does that mean internally at Vanderbilt?

7 A Well, internally we have three statuses that relate to
8 land. DOT 1 stands for home only. If it was statused as a 2,
9 that would stand for land-in-lieu. And what we mean by land-
10 in-lieu is that's where in lieu of a cash down payment, the
11 customer is putting up land in order to secure the loan. And
12 if it were a 3, it would mean land/home and that's a situation
13 where Vanderbilt is financing, you know, both the home and the
14 purchase of the property.

15 Q And so, I guess, 1, meaning that the only security at this
16 point in time that Vanderbilt has is what?

17 A Home only.

18 Q The home only?

19 A Yes, sir.

20 Q The mobile home itself?

21 A Yes, sir.

22 Q And that security interest is created by the retail
23 installment contract?

24 A Yes, sir.

25 Q All right. Now, it's got a loan balance here. See where

1 it says "current"?

2 A Yes, sir.

3 Q Now, if Vanderbilt had intended for this to have been a
4 paid out loan, paid in full, what would that line read?

5 A It would read as a zero if it were paid out because there
6 would be no balance owed.

7 Q Okay. Now, let's see. Let's go over here where it says
8 "insurer." What does that line tell us?

9 A Well, on this particular line, it shows that there's an
10 insurance policy in effect on the home. And it looks like it
11 expires January the 5th of 2010. And, you know, as the date --
12 it's October the 6th of 2009 -- so at that time it would have
13 been a current policy in effect.

14 Q So, indicating that Vanderbilt was still concerned about
15 whether or not the mobile home was insured, correct?

16 A Yes, sir.

17 Q And if Vanderbilt had released its security interest in
18 the home and been paid off, does it have any interest one way
19 or the other as to whether or not that house -- that home --
20 remained insured?

21 A No, sir, it didn't. If it's paid out we don't worry about
22 whether it's insured or not.

23 Q Now, after a loan is paid off in full, does Vanderbilt
24 then -- what does Vanderbilt then do with regard to the titling
25 agency in Austin?

1 A Well, if the loan is paid out in full, what we would do is
2 we would stamp -- well, related to TDHCA, the titling agency
3 there in Texas, what we would do is we would take the title and
4 we would send that -- mail it -- to the customer and it would
5 have the lien released on the title.

6 Q And was that done in this case?

7 A No, sir.

8 Q And could we show Exhibit 103, please?

9 Can you identify Exhibit 103 for us, please, sir?

10 A Yes, sir. This is from Texas Department of Housing and
11 Community Affairs' website. And basically they keep up-to-date
12 records of current lien statuses and ownership of manufactured
13 homes. And this is a record from that website.

14 Q And who does it show the lien holder to be?

15 A It shows it as Vanderbilt Mortgage and Finance.

16 Q Now let's go down to the date so we can see when this
17 screen shot was taken -- bottom right hand corner.

18 In August of 2009, while this litigation was
19 beginning to stir up, correct?

20 A Yes, sir.

21 Q Any indication at all that Vanderbilt has released its
22 lien on this home -- this mobile home?

23 A No, sir.

24 Q Now, you mentioned also --

25 Could you go to the ELMO, please?

1 You mentioned also what you do with the retail
2 installment contract once it's been paid in full? What do you
3 do internally with the retail installment contract if it's, in
4 fact, been paid in full?

5 A Yes, sir. If the loan's been paid in full, there's no
6 balance owed, then basically the system is changed to status as
7 a paid out account. When that happens, it generates a request
8 to our document control department. That's the department that
9 pulls the files from the vault. And so, it generates a request
10 for them to pull the file. They then take it to the paid out
11 department and then the paid out department, you know, they
12 take the contract and they actually stamp it paid and then they
13 mail it to the customer.

14 Q So, they would take the original retail installment
15 contract and actually mark it paid or paid in full?

16 A Yes, sir.

17 Q Just like this? Something like that?

18 A Yes, sir.

19 Q Or just maybe just simply paid?

20 **THE COURT:** I'm sorry. Has that been admitted?

21 **MR. LOCHRIDGE:** No, your Honor. I'm just showing --

22 **THE COURT:** No, sir.

23 **MR. LOCHRIDGE:** -- what the --

24 **THE COURT:** No, sir. Thank you.

25 //

1 **BY MR. LOCHRIDGE:**

2 Q Was there any -- you've seen the original retail
3 installment contract, haven't you?

4 A Sir, I haven't seen it in the file, no, sir.

5 Q The -- let's put Exhibit 1 up on the screen.

6 This is a copy of the original -- I believe the jury
7 will get a chance to see the original retail installment
8 contract -- and does it bear any paid or paid in full mark?

9 A No, sir.

10 Q Do you have any doubt in your mind about whether or not
11 Vanderbilt ever intended to consider that loan paid in full?

12 A No, sir.

13 **MR. LOCHRIDGE:** Pass the witness, your Honor.

14 **THE COURT:** Thank you. Mr. Rumley?

15 **CROSS EXAMINATION**

16 **BY MR. RUMLEY:**

17 Q Good afternoon, Mr. Shelton.

18 A Good afternoon.

19 Q How are you doing?

20 A Doing well.

21 Q I've met you before, too, right?

22 A Yes, sir.

23 Q I've taken your deposition?

24 A Yes, sir.

25 Q And in that deposition you swore to tell the truth?

1 A Yes, sir.

2 Q Right? Just like you did here today?

3 A Yes, sir, I did.

4 Q Right? And you remember that I took your deposition
5 because you signed a bunch of releases, right?

6 A Yes, sir.

7 Q And I think you referred to it as a project.

8 A Yes, sir, I did.

9 Q And you received that project from the legal department
10 within Clayton Homes, right?

11 A Yes, sir.

12 Q And that would be from Mr. Hodges?

13 A Sir, I'm not sure who I received it from, but I do recall
14 it was from the legal department.

15 Q Well, Tom Hodges is the general counsel, correct?

16 A Yes, sir.

17 Q For Clayton Homes, Inc., right?

18 A I'm not sure if he is or not, sir.

19 Q Well, which person within the legal department told you
20 about this project?

21 A I don't recall.

22 Q What did they tell you about the project?

23 **MR. LOCHRIDGE:** Your Honor, counsel well knows that
24 invades the attorney/client privilege. I object.

25 **THE COURT:** Sustained.

1 **MR. LOCHRIDGE:** Thank you.

2 **BY MR. RUMLEY:**

3 Q You told the jury a little bit ago that the reason why you
4 never provided the customer or the landowner with copies of
5 these releases was because there was a policy, a procedure. Is
6 that right?

7 A Yes, sir.

8 Q Do you remember what your answer was when I took your
9 deposition?

10 A Yes, sir.

11 Q What was your answer?

12 A Well, my answer in the deposition was that I didn't know.

13 Q So, sometime between the time I took your deposition and
14 sometime up to today, somehow you figured out the answer,
15 right?

16 A Yes, sir. Do you want me to explain how I learned that
17 information?

18 Q I want you to tell me, sir, during the deposition, we
19 talked about the deed of trust release, right?

20 A Yes, sir.

21 Q And the mechanic's lien releases, right?

22 A Yes, sir.

23 Q And you and I both agreed, I think, that honesty and
24 integrity is important not only to you as a man but should be
25 to a company, right?

1 A Yes, we did.

2 Q And if there's a situation, regardless of whatever it is,
3 that arises to the level where a project is created for
4 hundreds of releases are filed, do you believe that as a
5 company that one way to demonstrate their honesty and integrity
6 is to tell the customers? You agree with it?

7 A No, sir, I wouldn't agree with that. I think it would all
8 depend on the circumstances whether we should or should not
9 notify them.

10 Q Well, if a document is being released because there is a
11 signature forged in a transaction, should the customer be told?

12 A I'm not sure the answer to that.

13 Q If a document -- a deed of trust -- is forged and you file
14 a release because the deed of trust is forged, should you tell
15 the customer?

16 **MR. LOCHRIDGE:** Your Honor, I'm going to object to
17 that. It's a violation of the Court's order. There's no
18 evidence of forgery in this case. I object it violates the
19 Court's order.

20 **THE COURT:** All right. That's overruled.

21 **THE WITNESS:** I don't know the answer to that. If I
22 may say, you know, it's something that in my position I'm not
23 responsible for. I think I'd have to weigh the decision or,
24 you know, weigh the circumstances to make a decision on it.

25 //

1 **BY MR. RUMLEY:**

2 Q But you're here to talk to the jury, right?

3 A Yes, sir.

4 Q If you found out, sir, that the notary signature on a deed
5 of trust is forged, should you tell the customer?

6 A I don't know.

7 Q In fact, Mr. Shelton, I asked you in your deposition if
8 Vanderbilt were to make a mistake, you don't know whether or
9 not you should even tell the customer, right?

10 A Yes, sir. I said that.

11 Q In fact, I asked you if a customer accidentally --
12 accidentally -- made ten payments. The bank messes up and it
13 shoots out ten payments -- accidentally makes ten payments, you
14 said you don't know if you would even tell the customer. Is
15 that right?

16 A I believe that I said that. Now, what I said, though, too
17 was that we should not continue to accept payments from someone
18 who's paid out their obligation.

19 Q Sir, the question was very clear, okay? If you could
20 answer my question, please, sir?

21 A Yes, sir, I will.

22 Q If a customer accidentally -- for whatever reason --
23 accidentally made ten payments, would you tell the customer?

24 A Well, it's not my decision to make. I believe that we
25 should. If they've paid too much money to us, we should notify

1 them and refund the money.

2 Q What was your answer in your deposition?

3 A It was, "I don't know."

4 Q So, now you believe that they should be told if they made
5 ten payments, correct?

6 A Well, I would say if they pay us more money than what is
7 owed.

8 Q Well, it's true is it not, Mr. Shelton, that you don't
9 know whether or not the paid in full language in the release
10 was included as a mistake, correct?

11 A That's true.

12 Q You told us, I think, earlier that it was a standard form
13 printed out or something, but the truth is, is that you don't
14 even know perhaps it was a mistake that it was in there, right?

15 A Well, it was a standard form and I'm not aware of any
16 mistakes with that form.

17 Q Well, do you know whether or not paid in full was a
18 mistake?

19 A I know the loan is not paid in full.

20 Q Do you know if the loan was discharged because of fraud
21 and forgery?

22 A No, sir, not to my knowledge.

23 Q You understand -- do you know David Barton?

24 A Yes, sir.

25 Q If there's a situation, sir, where you discover fraud and

1 forgery in a transaction, do you have the authority to
2 discharge the debt?

3 A No, sir, I don't.

4 Q Do you know if David Barton does?

5 A I'm not sure if he does or not.

6 Q How about Mr. Nichols?

7 A I would say that Mr. Nichols would have that authority,
8 sir.

9 Q And do you agree that that would be the right thing to do
10 for a mortgage company if they figured out that there was fraud
11 and forgery in the transaction, the right thing to do would be
12 to discharge the debt?

13 A I don't think that I could agree to that, because without
14 knowing all of the circumstances, I'm not sure that I could
15 make that decision.

16 Q Well, those are the circumstances. You know the documents
17 are forged and fraudulent. Is that a situation where a company
18 like Vanderbilt should discharge the debt?

19 **MR. LOCHRIDGE:** Your Honor, I object. That's an
20 incomplete hypothetical.

21 **THE COURT:** Well, it's his hypothetical. So, that's
22 overruled.

23 **THE WITNESS:** Well, if we take the, you know -- I
24 guess it would depend on what's forged, you know? I mean, if
25 you could give me some more details about what was forged. I

1 mean, I'm not aware of any forgeries, so let me just say that
2 and, I mean, I'll try and answer your questions as best I can,
3 but, you know, if a document was forged, I would say it
4 wouldn't be a valid document.

5 **BY MR. RUMLEY:**

6 Q Have you read the deposition of Benjamin Frazier?

7 A I've read portions of it, yes.

8 Q What did he say?

9 A If I remember correctly, he said that I guess that he had
10 signed others' names on notary sections.

11 Q No. Actually, Mr. Frazier testified his signature was
12 forged, right?

13 A Yes, that's correct.

14 Q And is that acceptable to you? Someone works with
15 Vanderbilt?

16 A What do you mean works with Vanderbilt?

17 Q You work for Vanderbilt, right?

18 A Yes, sir, I do.

19 Q Is that acceptable to you to find out that your sales
20 manager, your notary on documents is forged? Is that
21 acceptable?

22 A No, sir. I mean, we wouldn't accept that.

23 Q Now, it's my understanding, Mr. Shelton, that if we accept
24 what they're claiming about this assignment that it would be
25 CMH is the one that would file the release of a mechanic's

1 lien, correct?

2 A Well, I think it would be based on whoever's listed on the
3 builder's and mechanic's lien contract.

4 Q Well, it's true is it not that you signed on behalf of
5 Vanderbilt a number of mechanic's lien releases?

6 A Yes, sir. I did.

7 Q Do you know why that is?

8 A Well, I don't know exactly. I mean, I would have to see
9 the builder's and mechanic's lien contracts on those, but
10 typically, what should be is, you know, if the builder's and
11 mechanic's lien was in the name of CMH Homes, Incorporated, it
12 would be signed by one of their representatives. If it was in
13 the name of Vanderbilt or had been assigned to Vanderbilt, then
14 it would be signed by a representative of Vanderbilt.

15 Q Do you agree with me that when --

16 Your Honor, defendants would offer Exhibit 47.

17 **MR. LOCHRIDGE:** We have no objection, your Honor.

18 **THE COURT:** Defendants' 47 is admitted.

19 **(Defendants' Exhibit Number 47 was received in evidence)**

20 **BY MR. RUMLEY:**

21 Q Mr. Shelton, you signed a number of releases, correct?

22 A Yes, sir.

23 Q And you signed a number of releases related to Store 214,
24 this project, right?

25 A Yes, sir.

1 Q And if we look at Exhibit 47, this is what we've talked
2 about, a deed of trust release, right?

3 A Yes, sir. I see a deed of trust release.

4 Q And clearly you had the authority from the board of
5 directors to sign this on behalf of Vanderbilt, right?

6 A Yes, sir. To be clear, my boss, Robert Roulet (phonetic),
7 had given me authority to sign these documents.

8 Q My question was did you have authority, sir?

9 A Yes, sir. That's my understanding.

10 Q And is this your signature?

11 A Yes, sir, it is.

12 Q And when you signed this document you did so under oath,
13 right?

14 A Yes, sir.

15 Q And if we read right here, this deed of trust says it was
16 released, the deed of trust and/or mortgage, right?

17 A Yes, sir.

18 Q And when you filed a deed of trust release that released
19 the deed of trust for the mortgage, you had authority to do so,
20 true?

21 A Yes, sir.

22 Q If we look at the next one, it's a mechanic lien release.
23 Do you see that?

24 A Yes, sir, I do.

25 Q But here, Vanderbilt is the one signing the release.

1 A Yes, sir.

2 Q All right. And so, if the mechanic lien contract was in
3 CMH's name, why would Vanderbilt be releasing that contract?

4 A Well, as I mentioned earlier, it's possible that the
5 mechanic's lien contract had been assigned to Vanderbilt.

6 Q And if it hadn't been assigned, then what would you sign?

7 A Well, if the builder's and mechanic's lien contract were
8 in the name of CMH Homes, Incorporated and had not been
9 assigned to Vanderbilt, was not in Vanderbilt's name, it should
10 have been signed by a CMH representative and should have stated
11 CMH Homes, Incorporated.

12 Q Okay. So, if it had been assigned to Vanderbilt, then
13 Vanderbilt would have signed the mechanic's lien release,
14 correct?

15 A That's my understanding.

16 Q And is that something that's typical that if you have a
17 situation where it is assigned, where CMH assigns it to
18 Vanderbilt, then Vanderbilt would be the one that files the
19 release of the mechanic's lien, correct?

20 A Could you say that again?

21 Q Yes. The situation where we looked at where Vanderbilt
22 has filed the mechanic lien release --

23 A Yes, sir?

24 Q That's a situation, the reason why Vanderbilt would file
25 the mechanic lien release is because the contract would have

1 been assigned, correct?

2 A That's possible.

3 Q I mean, that's the reason why they would do it, right?

4 A Well, there could be other reasons, but that's one
5 scenario that I'm aware of.

6 Q Well, if we look, Mr. Shelton -- and again, you were under
7 oath when you signed this, right?

8 A Yes, sir.

9 Q Okay. And it says right here, "Vanderbilt" -- in this
10 document, it says, "Vanderbilt declares that it is the true and
11 lawful owner and holder of that certain note and indebtedness
12 secured by the mechanic's lien." Did I read that --?

13 A Yes, sir.

14 Q So, in this, what you're swearing under oath is that the
15 note and the indebtedness had already been assigned from CMH to
16 Vanderbilt, correct?

17 A Well, and to be clear, you know, on this particular
18 release that we're looking at, I don't know exactly why it is
19 that. And basically, what --

20 **MR. RUMLEY:** Objection, non-responsive, your Honor.

21 **THE WITNESS:** To be clear, I just want to let you
22 know --

23 **THE COURT:** Would you listen, please, sir, to the
24 question and just answer the question?

25 **THE WITNESS:** Yes, your Honor.

1 **THE COURT:** Would you repeat the question, please,
2 sir?

3 **BY MR. RUMLEY:**

4 Q Mr. Shelton, my question is did you declare under oath
5 that Vanderbilt is the true and lawful owner and holder of that
6 certain note and indebtedness secured by the mechanic's lien
7 contract? Did you swear to that? Yes or no?

8 A No, sir.

9 Q Isn't this your signature?

10 A It is, sir.

11 Q And didn't I read that verbatim?

12 A You did, sir.

13 Q But you're not swearing to it?

14 A No. The oath that I signed stated that I was who I say I
15 am, Michael Shelton, and that the position I held at that time
16 was document services manager.

17 Q You're not telling the truth on this document?

18 A No, sir. I didn't say that.

19 Q Well, in this document where Vanderbilt files this
20 release, were they the owner and holder of the note?

21 A Yes, sir, they should have been.

22 Q Right. And that's your testimony, whether or not it's
23 under oath when you signed this document or under oath today in
24 front of this jury, right?

25 A Well, my testimony is that I signed this document and

1 that's what the document says. I think the document speaks for
2 itself.

3 Q Well, and the reason why you signed it, Mr. Shelton,
4 document service manager for Vanderbilt Mortgage and Finance,
5 the reason why you signed this mechanic lien release is because
6 at the time of this release, Vanderbilt was the true and lawful
7 owner and holder of the certain note and indebtedness secured
8 by the mechanic lien contract, right?

9 A Yes, sir.

10 Q Because if CMH had been the owner and holder of the note
11 and indebtedness, you would have signed this document on behalf
12 of CMH, true?

13 A If that would have been the case, I would not have signed
14 it, because I'm not an employee of CMH Homes, Incorporated.

15 Q Well, someone would have, right?

16 A Yes, sir. An authorized representative for CMH Homes,
17 Incorporated.

18 Q Okay. So, just so we make sure we're all on the same
19 page.

20 A Yes, sir.

21 Q If CMH actually owned the note and the indebtedness, the
22 mechanic's lien contract, a CMH person would have signed the
23 mechanic lien release, correct?

24 A Yes, sir.

25 Q And like we see on this exhibit, because in this instance

1 Vanderbilt had been assigned the contract, Vanderbilt owned the
2 debt and was holder of the note, Vanderbilt files the mechanic
3 lien release, correct?

4 A Yes, sir.

5 Q Thank you, Mr. Shelton. That's all I have.

6 A Thank you.

7 **CROSS EXAMINATION**

8 **BY MR. B. GUTIERREZ:**

9 Q Following up with what Mr. Rumley just asked you and then
10 we know by looking at this contract and what you've just told
11 the jury that this clearly shows that the mechanic lien
12 contract had never been assigned to Vanderbilt, right?

13 A Well, this document shows that CMH Homes, Incorporated is
14 the holder of the mechanic's lien contract. It could have been
15 assigned after that -- after this one was filed.

16 Q But certainly not before that, right?

17 A I would not think so, no.

18 Q Just for the record, your Honor, this is Exhibit Number
19 11.

20 The document that -- a couple of documents that we
21 saw on the screen earlier when you were being asked questions
22 by Mr. Lochridge dealt with I think it was a loan payout type
23 of document that he was going over with you and I believe that
24 there was an area that talked about litigation. Do you
25 remember that on the document?

1 A No, sir. I don't recall that.

2 Q Okay.

3 **(Attorneys confer)**

4 This document right here. And I said litigation. It
5 talked about legal action. Do you see that?

6 A Yes, sir. I do recall that.

7 Q And you said that there was a coding procedure when a loan
8 has been paid in full. Do you remember that?

9 A Yes, sir.

10 Q If you had coded the account of Mr. Flores and Mr. King,
11 if you had coded it paid out -- I think you said that that's
12 the code, paid out?

13 A The code for --?

14 Q This that you would write on there or stamp on there paid
15 out where it says "legal action"?

16 A Yes. If all the balances have been paid, it would have
17 been coded paid out or should have been.

18 Q But if you did that then certainly there was no way that
19 the people in collections could continue calling and trying to
20 collect money from my clients, Mr. Flores and Mr. King, right?

21 A That's right. If the loan was paid out in full, they
22 should not.

23 Q And if you had notified the Texas Department of Housing
24 and Community Affairs that you had filed releases, then you
25 would have been required to then send notice and send the

1 certificate of title to the mobile home to Mr. Flores and
2 Mr. King, right?

3 A I'm not sure what you're asking.

4 Q Okay. That document that was shown to you from the
5 Department of Housing and Community Affairs?

6 A Yes, sir.

7 Q Okay? Where you recorded your lien or it talks about
8 sometime in 2009 it acknowledges that you all made sure that it
9 was reflected that you continued to carry a lien on this mobile
10 home. Do you remember that?

11 A Yes, sir. I do.

12 Q If you had sent any other information like, "Hey, you
13 know, we released this lien back in 2005," I mean, that would
14 have certainly given notice to the Flores' -- to Mr. Flores and
15 Mr. King -- that they didn't have to pay on this account any
16 more, right?

17 A Yes, sir. I would agree with your assumption that had we
18 sent a title with our lien released to the TDHCA and they
19 released the lien then yes, that would have the indication they
20 would have had.

21 Q Then you wouldn't be able to continue to collect money
22 from Mr. Flores and Mr. King, right?

23 A Yes, sir. I agree with that.

24 Q You talked about partial releases. Do you remember that?

25 A I do.

1 Q You're not saying that all this hundreds of releases that
2 you filed were partial releases, are you?

3 A Yes, sir. We consider them partial releases, but to be
4 clear, the reason we consider them partial releases --

5 Q Excuse me, sir. Are you considering them partial -- is
6 that what you're saying now, that they're partial releases?

7 A Well, what I would say is the land is released in full,
8 but we did not release the interest in the home.

9 Q You're saying that's a partial release, sir? You're
10 referring Exhibit Number 11? Are you telling this jury that
11 that was what you intended to do? That that's a partial
12 release?

13 A Absolutely. The reason I call it a partial release --

14 Q No, no. I'm going to ask you --

15 **THE COURT:** But wait a minute. Just answer the
16 question, please. Go ahead.

17 **BY MR. B. GUTIERREZ:**

18 Q Was there anything that could have prevented you from
19 identifying here where it says a mechanic lien release as
20 partial mechanic lien release? Is there anything that could
21 have prevented you from doing that with this hundreds of
22 releases that you filed?

23 A I'm not sure what your question is.

24 Q I thought it was pretty simple. Is there anything -- was
25 there anything that would have prevented you from typing on

1 there, from printing on there, that form, and just saying
2 partial mechanic lien release or partial deed of trust release?

3 A No, sir.

4 **MR. B. GUTIERREZ:** That's all the questions we have,
5 your Honor.

6 **(Pause)**

7 **THE COURT:** Thank you. Mr. Lochridge?

8 **MR. LOCHRIDGE:** Thank you very much, your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MR. LOCHRIDGE:**

11 Q Let's go to that last question about the partial release
12 that you wanted to explain your answer. What do you mean by a
13 partial release?

14 A Well, the reason I call it a partial release is because
15 the loan secures a piece of real property land and also secures
16 a home. And in this case, we're releasing the land in full and
17 that's why the mechanic's lien contract release does not say
18 partial, because that only releases the land and we're
19 releasing the land in full.

20 But the reason we refer to it as a partial is because
21 we're still keeping security in the home.

22 Q Now, you talked a little bit about who the signatory was
23 on one of those particular mechanic's lien contracts.

24 But let's call up, I believe it's 13.

25 That's a mechanic's lien contract and the signatory

1 is CMH Homes, Inc., right?

2 A Yes, sir.

3 Q Is that the named party to the mechanic's lien contract?

4 A It should be, yes.

5 Q So, if you went to the county records you would find CMH
6 Homes as the party to the mechanic's lien contract, correct?

7 A Yes, sir. It should reflect that.

8 Q And then, this release would tie back to who the
9 contracting party was in the mechanic's lien contract, correct?

10 A Yes, sir. It should.

11 Q All right. And the fact that it's set up the way that is,
12 is that any indication at all to you that the note, the retail
13 installment contract, was not assigned to Vanderbilt?

14 **MR. B. GUTIERREZ:** Objection, your Honor.

15 Mr. Shelton has already answered that question.

16 **THE COURT:** Sorry. Overruled.

17 **BY MR. LOCHRIDGE:**

18 Q Thank you.

19 A Could you ask me the question again, please?

20 Q Yes. This mechanic's lien release prepared the way it is,
21 is that any indication at all to you that, in fact, the loan in
22 the retail installment contract was not actually assigned to
23 Vanderbilt?

24 A No, sir.

25 Q If we could put Exhibit 1 up on the screen, please? The

1 upper left hand corner, let's pull it up.

2 Who's the assignee?

3 A That's Vanderbilt Mortgage and Finance.

4 Q Okay. Let's go to the second line of the first paragraph.

5 "Seller will submit this contract to Vanderbilt
6 Mortgage and Finance for assignment -- for approval." Is it
7 your understanding that that's what happened?

8 A Yes, sir.

9 Q Is that what the records reflect in Vanderbilt?

10 A Yes, sir.

11 Q Go to the fourth page of this agreement. Above the CMH
12 Homes, Inc. signature line. Pull out, "Seller agrees to this
13 contract and is subject to acceptance by Vanderbilt Mortgage
14 and its designated office and assigns it to Vanderbilt Mortgage
15 Finance, Inc."

16 Is it your understanding that, in fact, this credit
17 was accepted by Vanderbilt?

18 A Yes, it is.

19 Q Is that what the records of Vanderbilt show that you were
20 in charge of?

21 A Yes, it does.

22 Q And if you'd put up Exhibit 11.

23 This is a Vanderbilt document indicating that it's
24 the holder of the retail installment contract tracking the
25 payments due and so forth?

1 A Yes, sir.

2 MR. LOCHRIDGE: No further questions, your Honor.

3 THE COURT: Thank you.

4 COURT SECURITY OFFICER: Your Honor, when is the
5 break?

6 THE COURT: Twenty-minute break? Well, do you want
7 two breaks, two ten-minute breaks, or a 20-minute break?

8 JUROR NUMBER 3: Ten.

9 THE COURT: Two ten's? Okay. Ten now. Thanks.
10 Would you please stand for the jury?

11 THE CLERK: All rise for the jury.

12 (Jurors exit courtroom at 2:44 p.m.)

13 MR. RUMLEY: Your Honor, I don't have any more
14 (indiscernible).

15 THE COURT: We're done with him?

16 MR. LOCHRIDGE: Yes, your Honor.

17 THE COURT: Okay. You can stand down.

18 THE WITNESS: Thank you, your Honor.

19 (Witness excused at 2:44 p.m.)

20 (A recess was taken from 2:44 p.m. to 2:54 p.m.)

21 (Outside the presence of the jury)

22 THE COURT: Are we ready yet?

23 THE CLERK: Yes, your Honor.

24 THE COURT: Would you bring them in? Everybody
25 ready? Jury's coming in.

1 **THE CLERK:** All rise for the jury.

2 **(Jurors enter courtroom at 2:55 p.m.)**

3 **THE COURT:** Thank you. You may be seated.

4 **(Pause)**

5 You may proceed. Call your next witness. Sorry.

6 **MR. LOCHRIDGE:** We call David Jordan.

7 **DAVID JORDAN, PLAINTIFFS' WITNESS, SWORN**

8 **THE COURT:** You may proceed, please, sir.

9 **MR. LOCHRIDGE:** Thank you very much, your Honor.

10 **DIRECT EXAMINATION**

11 **BY MR. LOCHRIDGE:**

12 Q Mr. Jordan, would you state your name for the jury?

13 A David Jordan.

14 Q Tell us who you work for right now, Mr. Jordan?

15 A I work for CMH Services.

16 Q And for which of the CMH -- which of the various different
17 entities do you perform services?

18 A I'm an officer of CMH Homes, Inc. and Vanderbilt Mortgage
19 and Finance.

20 Q And why are you officers of both of those companies?

21 A Well, I started my career -- early in my career I was
22 working with the retail group, CMH Homes, and I'm basically a
23 back-up for the other two officers. If they need someone to
24 sign things such as licensing -- mostly licensing -- for
25 retail.

1 Then for Vanderbilt, I've been around a long time.
2 I've worked in Vanderbilt for a long time before my current
3 job. So, I have a lot of experience and so they also -- it was
4 similar -- they need someone to sign document releases and
5 licensing issues.

6 Q And what is the main job that you have now with regard to
7 Clayton Homes, Inc.?

8 A I'm the corporate controller and what that is, is kind of
9 the chief accountant for the consolidating financials. We
10 consolidate all the financials for the various subsidiaries of
11 Clayton and report those results to Berkshire Hathaway.

12 Q And so, currently you've got CMH Homes, which is a
13 separate company over here on one side, correct?

14 A Yes.

15 Q And you've got Vanderbilt Mortgage, which is a lending
16 company -- self-contained lending company -- over here on the
17 other side. Is that right?

18 A Yes.

19 Q And their financial information goes upstream to their
20 parent companies, correct?

21 A Yes, that's correct.

22 Q And you work with those financial documents?

23 A Yes.

24 Q Now, you haven't always had this job, have you?

25 A No, I have not.

1 Q Tell us where you were born and raised.

2 A I was born in west Tennessee, in Milan, Tennessee, which
3 is about 100 miles northeast of Memphis. And I grew up there
4 in a very small town, Bruceton, Tennessee is the name of it.

5 Q And did you ever get to college?

6 A Yes. I went to the University of Saint Martin for two
7 years. Left there; moved to St. Louis and worked on the
8 railroad as a conductor and trainman for five years. And then
9 I moved back to Knoxville, Tennessee and attended the
10 University of Tennessee in Knoxville; graduated in 1986.

11 Q When did you start to work for Vanderbilt or Clayton
12 Mobile Homes?

13 A I started with Vanderbilt Mortgage in 1983 as a collector.

14 Q How many collectors were there at that time?

15 A Counting me, there were two.

16 Q You all would follow up on all the various loans that
17 Vanderbilt had?

18 A Yes.

19 Q Did you move on from that position?

20 A Yes. I worked in Vanderbilt for a year, then I went to
21 work in the retail division at that time; worked there for four
22 years. While I was there I had graduated from college and then
23 in 1988 I went to work at Vanderbilt Mortgage and really
24 started the accounting function, the accounting department,
25 there.

1 Q Now, I want to go straight to this question of releases.
2 There are two releases here.

3 Let's go ahead and put both of them on the screen,
4 please. They're Exhibits 12 and Exhibit 13. One's a release
5 of deed of trust; the other's a release of a builder's and
6 mechanic's lien.

7 Now, did you sign both of those releases?

8 A Yes, I did.

9 Q And have you signed similar releases in the past on behalf
10 of either Vanderbilt or CMH Homes?

11 A Yes, I have.

12 Q And what is it that you intend to release when you sign a
13 deed of trust release or a builder's and mechanic's lien
14 release?

15 A The lien on the land.

16 Q Well, now, what about the retail installment contracts?
17 Are those -- is one of those generally signed in connection
18 with each purchase of a mobile home at CMH Homes?

19 A Yes. Yes, there's one.

20 Q And are you familiar with that contract?

21 A Yes, I am.

22 Q All right. By signing these releases in October of 2005,
23 did you intend to release any of Vanderbilt's rights under the
24 retail installment contract?

25 A No.

1 Q Did you intend to release Mr. Flores or Mr. King from
2 their obligations of fully paying the retail installment
3 contract?

4 A No.

5 Q Now, in the September, October 2005 time frame, were you
6 made aware of the fact that a number of releases of land --
7 deeds of trust and builder's and mechanic's liens -- were going
8 to be prepared and signed having to do with Store 214 in Corpus
9 Christi?

10 A You know, I was aware of something going on in the Corpus
11 Christi area and I can't remember exactly when I knew that the
12 releases were done in conjunction with that.

13 Q Did you come to learn that the reason the releases were
14 being prepared for your signature and the signature of others
15 is that there had been issues with the notary practices in
16 Store 214?

17 A Yes. I became aware of that later.

18 Q And was it your understanding that by releasing the land,
19 Vanderbilt hoped to rectify any problems that might have arisen
20 out of that?

21 **MR. RUMLEY:** Objection, leading.

22 **THE COURT:** Sustained.

23 **BY MR. LOCHRIDGE:**

24 Q What did you understand the purpose of releasing this land
25 that had been pledged to secure some of these loans?

1 A My understanding was that -- or is -- that it was the fair
2 thing to do; in case there were any improprieties, to just
3 release all of the land and then everyone would have their land
4 back.

5 Q Now, in connection with the signing of a retail
6 installment contract -- and let's put Exhibit 1 up on the
7 screen, please -- is there any notary signature required in
8 connection with the signing of a retail installment contract?

9 A No.

10 Q And is it that contract that creates the obligation to pay
11 on behalf of the customer, such as Mr. King and Mr. Flores?

12 A Yes, it is.

13 Q And is it this contract that creates the security interest
14 in the mobile home that secures the loan, as Mr. King and
15 Mr. Flores?

16 A Yes.

17 Q And are you aware of any notary irregularities with the
18 signing of this contract?

19 A No, I'm not.

20 Q In fact, this contract's not notarized, is it?

21 A No, it isn't.

22 MR. RUMLEY: Objection, leading.

23 THE COURT: Sustained.

24 //

25 //

1 **BY MR. LOCHRIDGE:**

2 Q Is a (indiscernible) contract notarized?

3 A No, it's not notarized.

4 Q Now, you understand how the assignment of the contract and
5 the money that's involved in the transaction flows as between
6 customer CMH Homes and Vanderbilt?

7 A Yes.

8 Q Okay. Could you explain how that works for the jury,
9 please?

10 A Yes. The customer agrees to buy a home; gets their credit
11 approved; and so they sign a contract with the retail
12 organization -- an installment sales contract. Then that
13 contract is assigned to Vanderbilt, the lender, and the lender
14 pays the retail company, CMH Homes, for that contract. And
15 then Vanderbilt then collects those payments and services that
16 obligation.

17 Q So, if you got the customer walking in, the customer wants
18 a mobile home -- fair enough? That's what CMH does, right?

19 A Yes.

20 Q They make an agreement. What's it called?

21 A Retail installment sales contract.

22 Q And under that agreement, what does CMH Homes give to the
23 customer?

24 A A home.

25 Q And what does the customer give CMH Homes?

1 A They give them a promise to pay --

2 Q To pay for the home.

3 A Uh-huh.

4 Q All right. And then, what does CMH Homes do with that
5 promise to pay?

6 A They assign that to a lender.

7 Q All right.

8 A In this case, Vanderbilt.

9 Q In this case, Vanderbilt. So, they assign that promise to
10 pay from the customer over to Vanderbilt, right?

11 A Yes.

12 Q And what do they get for having turned over that promise
13 to pay from the customer to Vanderbilt?

14 A They get paid.

15 Q The money from Vanderbilt then goes --?

16 A It goes back to CMH Homes.

17 Q CMH Homes. All right. Now, and CMH Homes is paid in full
18 at that point?

19 A Yes, they are.

20 Q Is Vanderbilt paid in full at that point?

21 A No.

22 Q Now, let's look at Exhibit -- I believe it's 45 and 46.

23 Can you pull up 45, please? Now, nobody in this
24 courtroom can read that, except for maybe you. Can you pull up
25 just the top part and then the bottom part -- just the top part

1 enough to identify it and then the bottom entry? Okay.

2 Now, this deal -- up in the upper left hand corner --
3 it's Cesar Flores. It's got the number 646307. Do you
4 understand what that is?

5 A Yes.

6 Q What is that?

7 A That's their loan number.

8 Q Okay. And their loan file?

9 A Customer loan file number -- customer number.

10 Q And does that name and number follow this file forever
11 inside Vanderbilt or CMH Homes?

12 A Yes, it does.

13 Q And let's look at the bottom entry. What does that entry
14 tell us?

15 A That is the funding, if you will, from the mortgage
16 company, Vanderbilt Mortgage, to the retail sales center where
17 they got paid for the contract.

18 Q So, when I'm talking about a minute -- that's the money
19 coming from Vanderbilt over to pay CMH Homes.

20 A Yes.

21 Q Now, in the old days, how was that handled?

22 A Well, years ago, the mortgage company would write a check
23 and they'd write checks for all the deals that were done during
24 the closing cycle. But now it's all done electronically
25 through journal entries.

1 Q But in either case, what happens to the money?

2 A It flows from the mortgage company over to the CMH Homes
3 retail company.

4 Q Let's look at Exhibit 46. Now, let's bring out the top
5 entry so we can try to see it.

6 Now, the last bookkeeping entry was on the CMH Homes
7 side. Is that right?

8 A Yes, that's correct.

9 Q Okay. What does this bookkeeping entry show?

10 A This shows the recording of the retail installment sales
11 contract on Vanderbilt Mortgage finance books. So, you have at
12 the top is the entry -- I hate to use an accounting term --
13 just an entry to book the receivable and then the bottom, the
14 minus number there is the credit, the cash going out, if you
15 will in the inter-company account to retail.

16 Q That's showing the money coming over to their sister
17 company, CMH Homes, and now they own this retail installment
18 contract.

19 A Yes.

20 Q It hasn't been assigned.

21 A Yes.

22 Q Okay. Now, let's look at Exhibit 1. That's the retail
23 installment contract. And I'll just pull it up quickly because
24 the jury's seen it many times the first paragraph, there at the
25 top where it says "assignee."

1 Assignee is who?

2 A Vanderbilt Mortgage and Finance.

3 Q And that first -- second line indicates that it's going to
4 be submitted to Vanderbilt Mortgage for approval, correct?

5 A Yes, that's correct.

6 Q All right. And from your review of the records it, in
7 fact, was it approved and was it then assigned to Vanderbilt?

8 A Yes, it was.

9 Q Okay. Now, let's look at the fourth page of this
10 agreement and let's pull up where it says "seller's agreement."

11 Do you see that?

12 A Yes.

13 Q And it says, "Seller agrees to this contract" -- seller
14 being CMH Homes, correct?

15 A Yes.

16 Q "Subject to acceptance by Vanderbilt" -- assigns it to
17 Vanderbilt, correct?

18 A Yes.

19 Q And the final sentence is, "Notice of acceptance is hereby
20 waived." Do you see that?

21 A Yes, I do.

22 Q And now, this document was signed -- go back and let's
23 look at the signature page. This document is signed by Clayton
24 Homes -- CMH Homes, correct?

25 A Yes.

1 Q And who else signs this document? Let's go to the other
2 side of the signature page.

3 It's also signed by Mr. Flores and Mr. King, correct?

4 A Yes.

5 Q And we've pointed out several places in this contract
6 where they're being notified that this was to be assigned to
7 Vanderbilt, correct?

8 A Yes.

9 Q And we've seen that the notice of acceptance is waived,
10 correct?

11 A Yes.

12 Q All right. Now, then, let's go to the mechanic's lien
13 contract that you signed -- or the mechanic's lien release that
14 you signed, Exhibit 13. That's your signature, correct?

15 A Yes, it is.

16 Q Let's go to the notary part. The notary part says,
17 "Before me, the undersigned authority" -- that's Ms. Gaines, a
18 notary that works there in your office, correct?

19 A That's correct.

20 Q All right. "Personally appeared David Jordan, with whom
21 I'm personally acquainted, and who, upon oath" -- let's see
22 what you said under oath. You acknowledge yourself to be
23 assistant secretary for CMH Homes, Inc. Now, is that true?

24 A It is true.

25 Q You were the assistant secretary?

1 A I was.

2 Q All right. (Indiscernible). And then, let's see what
3 else you swore to. "And that he, as such officer" -- let's
4 highlight the next line -- "being authorized so to do, executed
5 the foregoing instrument for the purposes therein contained."

6 And were you so authorized?

7 A Yes, I was.

8 Q Okay. And what was your purpose on behalf of -- let's go
9 back (indiscernible) on behalf of CMH Homes, what was your
10 purpose in signing this release?

11 A To release the mechanic's lien for CMH Homes, Inc.

12 Q And at that point in time, the mechanic's lien still stood
13 in the name of CMH. That's where it would be in the deed
14 records that you'd find it, correct?

15 A Yes.

16 Q So, if one wanted to go and try to trace the title here,
17 you would find CMH Homes being a party to the builder's and
18 mechanic's lien contract, right?

19 MR. RUMLEY: Objection, leading.

20 BY MR. LOCHRIDGE:

21 Q Is that who you would find as --

22 A You would find CMH Homes.

23 Q And then, who would you find releasing the builder's and
24 mechanic's lien contract?

25 A CMH Homes.

1 Q Now, would you find in those deed records anything about
2 any party releasing the retail installment contract and the
3 promise to pay that the Floreses and Kings had?

4 A No. You wouldn't find anything like that.

5 Q And do you know what generally happens when a customer
6 pays in full his obligation -- his or her obligation -- to
7 Vanderbilt?

8 A The contract -- the retail installment contract -- is I
9 believe stamped and returned to the customer.

10 Q And have you seen any evidence that in this case that
11 happened?

12 A No. That didn't happen here.

13 **MR. LOCHRIDGE:** Pass the witness, your Honor.

14 **THE COURT:** Thank you, sir.

15 **CROSS EXAMINATION**

16 **BY MR. RUMLEY:**

17 Q Good afternoon, Mr. Jordan. How are you doing?

18 A I'm fine, thank you.

19 Q I had an opportunity to take your deposition, too,
20 correct?

21 A Yes.

22 Q The first part of your testimony you talked about being
23 comptroller and you basically handle all the financials, how
24 they flow up through Clayton Homes, Inc.?

25 A Yes.

1 Q And so, you would handle the financials, for example, the
2 profits that would come from Vanderbilt, the profits that would
3 come from the revenue or whatever in accounting terms -- the
4 money flowing up from Vanderbilt, CMH, CMH Manufacturing, all
5 of those, correct?

6 A Yes, that's correct.

7 Q And so, you'd be very familiar with the various finances
8 of the subsidiary companies, true?

9 A Yes.

10 Q Now, one of the things the jury has heard at least from
11 CMH is that the documents consistently say that they own their
12 own bank. Does Clayton Homes, Inc. own its own bank?

13 A Not that I'm aware of.

14 Q Would be an accurate or a truthful representation for
15 anyone to make that CMH owns their own bank?

16 **MR. LOCHRIDGE:** Your Honor, I'm going to object,
17 relevancy. They've haven't pled anything along these lines as
18 creating any problems with their clients about any
19 representation regarding owning their own bank. It's
20 irrelevant.

21 **THE COURT:** Sustained.

22 **MR. LOCHRIDGE:** Thank you.

23 **BY MR. RUMLEY:**

24 Q Is it true, sir, that -- well, let me ask you this. How
25 is it that Vanderbilt raises its money?

1 A Currently, Vanderbilt gets its money from the parent, the
2 ultimate parent of Clayton Homes, Berkshire Hathaway.

3 Q And I want to talk about back in 2002 -- 2001, 2002 --
4 that time period. How is it that Vanderbilt raised its money?

5 **MR. LOCHRIDGE:** Your Honor, again, I object on
6 relevancy basis. They've foregone any claim regarding this.

7 **THE COURT:** Overruled.

8 **BY MR. RUMLEY:**

9 Q How is it that back in 2002, 2001, how is it that
10 Vanderbilt raised its money?

11 A Vanderbilt had an ongoing asset back securities program
12 that they sold their mortgages into.

13 Q And a very simple version of what that is, is that you all
14 would package up the various loans and you would sell them to
15 investors, correct?

16 A That is a very simple skinny way to say that, yes.

17 Q Right. And you agree with me generally that a loan that's
18 backed by real property is more valuable than a loan that is
19 unsecured, correct?

20 A Please ask that again.

21 Q You agree with me that a loan that is secured by real
22 property is more valuable to an investor than a loan that's
23 unsecured by real property?

24 A I think individually that's probably not exactly true,
25 because a loan -- well, I don't think it's exactly true on an

1 individual basis.

2 Q Generally is it true that a loan that's secured by real
3 property is more valuable than a loan that's unsecured?

4 A It depends on, I think, how you define value.

5 Q Less likely to default?

6 A I think generally that is true. It's less likely to
7 default.

8 Q And not getting into the complexities of it, but these
9 loans when they're sold to investors, they're actually sold in
10 bonds, correct?

11 A The bonds are sold to investors that are backed by the
12 cash flow coming off the pool -- large pool -- of loans, yes.

13 Q And it's true, is it not, that this loan -- the loan
14 that's involved in this case -- was sold to investors in the
15 2002-A offering?

16 A Yes, I believe it was part of 2002-A asset back security.

17 Q All right. And it's your position -- well, let me ask you
18 this, Mr. Jordan. When the loan is sold, like this loan in
19 this case, when it's sold into this offering, it is identified
20 as having collateral of real property, correct?

21 A It is.

22 Q And it's true, is it not, that a number of these loans --
23 these loans that are involved in these releases that were filed
24 in Store 214 -- they were sold to investors, correct?

25 A Yes, that's correct. A few of them were.

1 Q And you understand essentially that the allegations in
2 this case, it's we're contending that the releases that you
3 signed and filed discharged the debt and your company is
4 claiming that it just released the land. You understand that's
5 generally the dispute, right?

6 A Yes.

7 Q Even if we take your position as true, that all these
8 releases did is just release the collateral, did you notify the
9 investors that the collateral had been released?

10 A Not that I'm aware of.

11 Q You didn't tell the customers about the releases, correct?

12 A I believe that's correct, yes.

13 Q There were the two releases you signed were not given to
14 the customer, true?

15 A I believe that's true.

16 Q And they weren't given to the landowner -- to my clients --
17 -- true?

18 A I believe that's true, yes.

19 Q And you never told the investors who bought the loan,
20 right?

21 A That's correct.

22 Q How much money did Vanderbilt make off of the 2002-A
23 offering that included this loan?

24 **MR. LOCHRIDGE:** Your Honor, object again, relevancy.
25 Goes way beyond what's at issue in this case.

1 **THE COURT:** Sustained. Oh, I'm sorry.

2 **MR. RUMLEY:** Your Honor, it's already admitted by
3 them. It's Clayton Exhibit 47 is the 2002-A offering. It's
4 already in evidence.

5 **MR. LOCHRIDGE:** Your Honor, I stand on my objection.
6 This is irrelevant.

7 **THE COURT:** Sustained.

8 **MR. LOCHRIDGE:** Thank you.

9 **BY MR. RUMLEY:**

10 Q Mr. Jordan, I want to ask you about the mechanic release
11 that you signed and it's Exhibit 11. And this is a release
12 that you signed, true?

13 A Yes. Yes, it is.

14 Q Okay. And you signed it on behalf of CMH Homes and you
15 did so under the authority of the board of directors, correct?

16 A Yes, that's correct.

17 Q You were authorized to sign it?

18 A Yes.

19 Q And if we look at this document that's dated October 8,
20 2005; do you see that?

21 A Yes.

22 Q Okay. And when we look at the document, it says,
23 "CMH Homes, Inc., a corporation with an office place in Blount
24 County, Tennessee, declares that it is the true and lawful
25 owner/holder of that certain note and indebtedness secured by a

1 mechanic's lien contract."

2 When you signed this document, was that true?

3 A I believe they had already assigned the installment sales
4 contract to the mortgage company -- Vanderbilt -- by that time.

5 Q Well, if the contract had already been assigned, then
6 Vanderbilt would have filed this release, correct?

7 A I don't think that's right. I don't believe that's
8 correct. The original holder of the mechanic's lien would file
9 that release.

10 Q Well, but this says is as of October 8th, 2005, CMH just
11 declares that it is the true and lawful owner and holder of
12 that certain note. Correct?

13 A That's what it says and it should say in the past tense,
14 but it doesn't.

15 Q Well, I mean, you read it before you signed it, right?

16 A You know, I don't remember signing this specific document.

17 Q Generally, do you read documents before you sign them?

18 A I note certain things about them. It's a form so they're
19 all virtually the same.

20 Q Well, do you know, Mr. Jordan, whether or not you read
21 these documents before you signed them?

22 A You know, I didn't read every one of them before I signed
23 them. I looked at certain things that would change and made
24 sure that it was me and it had the title correct.

25 Q Do you agree to be bound by a document that you signed?

1 You signed this under the authority of the board of directors,
2 right?

3 A Yes.

4 Q Do you agree to be bound by the document that you signed?

5 A Yes. I mean, of course, on this, yeah. We were wanting
6 to release the land. That's what we did.

7 Q And you stand by it, right?

8 A Sure.

9 Q All right. And if we look -- going back to the mechanic
10 lien release, it says "and has been paid in full," correct?

11 A Yes. It says that.

12 Q And if we look at the deed of trust release, it says "and
13 does by here release the lien of said deed of trust and/or
14 mortgage," correct?

15 A Yes, it says that.

16 Q Now, isn't it true, Mr. Jordan, that if you did not intend
17 to release the obligation, that you would have put that in the
18 release?

19 A It doesn't -- I don't believe it has to be in there.

20 Q Would you have put it in there, sir?

21 A It wasn't in the form that we used.

22 **MR. RUMLEY:** Your Honor, we would offer Exhibits 189
23 and 190.

24 **(Pause)**

25 **THE COURT:** Any objection?

1 **MR. LOCHRIDGE:** Your Honor, these deal with separate
2 transactions subject to our motion and we object for that
3 reason.

4 **MR. RUMLEY:** Your Honor, may we approach?

5 **THE COURT:** Yes.

6 **(Begin bench conference at 3:28 p.m.)**

7 **MR. RUMLEY:** These are additional releases that
8 Mr. Jordan signed related to Lot 214. And in this release,
9 rather than "paid in full," he puts in that there's still a
10 bona fide debt. And so, it goes to impeachment on the "paid in
11 full."

12 **MR. LOCHRIDGE:** And after that, your Honor, there's a
13 different transaction --

14 **THE COURT:** I understand that.

15 **MR. LOCHRIDGE:** -- and different considerations are
16 made and litigation's involved in which case --

17 **THE COURT:** And this is 214.

18 **MR. LOCHRIDGE:** It's 214, but it's different
19 transactions and agreed through stipulation --

20 **THE COURT:** Thank you.

21 **(End bench conference at 3:29 p.m.)**

22 **THE COURT:** 189 and 190 are admitted.

23 **(Defendants' Exhibits Numbers 189 and 190 were received in**
24 **evidence)**

25 //

1 **BY MR. RUMLEY:**

2 Q Mr. Jordan, let me show you Exhibit 189, Defendants'
3 Exhibit 189, and this is -- you see right here -- the deed of
4 trust release. Do you see that?

5 A Yes.

6 Q And it signed by Vanderbilt -- I'm sorry, yourself. You
7 signed it on behalf of Vanderbilt, correct?

8 A I did, yes.

9 Q And again, the same things in place. You did so under the
10 authority of the board of directors, right?

11 A Yes, I did.

12 Q And in this one, is it true, sir, that rather than
13 including the paid in full language like in the releases that
14 we just read involving this case, you have included "and that
15 the sales agreement and/or contract continues to secure a bona
16 fide obligation." Do you see that?

17 **MR. LOCHRIDGE:** Your Honor, I object. That's a
18 misstatement. There is no paid in full language in the deed of
19 trust release.

20 **MR. RUMLEY:** I'll correct myself, your Honor.

21 **THE COURT:** That's sustained.

22 **MR. LOCHRIDGE:** Thank you.

23 **BY MR. RUMLEY:**

24 Q If we look, Mr. Jordan, and Mr. Lochridge is correct, the
25 deed of trust release says, "The lien of said deed of trust

1 does hereby release the lien of said deed of trust and/or
2 mortgage," correct? And that's in the one that's involved in
3 this case.

4 A Yes. I see that. Uh-huh.

5 Q Okay. And if we look at the one that you signed that's
6 marked -- here it is, Exhibit 189 -- it says "and that the
7 sales agreement," which would be the installment contract,
8 true? Right?

9 A It would be a sales agreement.

10 Q "And that the sales agreement and/or contract" -- by the
11 installment contract --

12 A Okay.

13 Q "Continues to secure a bona fide obligation." Did I read
14 that right?

15 A Yes. I believe you did. Yes.

16 Q When you signed this document, you clearly intended that
17 the debt was still due and owing, correct?

18 A Yes. Uh-huh. Yes, I did.

19 Q If we look at Exhibit 190, and this is a builder's and
20 mechanic's lien contract release, correct?

21 A Yes, it is.

22 Q And again, you, Mr. Jordan, signed this on behalf of CMH
23 Homes.

24 A I did.

25 Q Okay. And if we go and we compare Exhibit Number 11,

1 which is the mechanic lien release that you signed in this
2 case, true?

3 A Yes, it is.

4 Q And the mechanic lien release you signed in this case says
5 "and has been paid in full," correct?

6 A It does.

7 Q And if we look at 190, it says "and that the sales
8 agreement and/or contract continues to secure a bona fide
9 obligation," correct?

10 A Yes.

11 Q Do you understand the difference between the two?

12 A I understand the difference in the wording, sure. Yes.

13 Q You understand the difference between paid and full and
14 still have a bona fide obligation?

15 A In the context of the documents? I'm sorry.

16 Q In the context of the documents.

17 A Yes. I understand the difference in what they mean.

18 Q And Vanderbilt actually provides you with definitions of
19 various terms, correct, that you're supposed to use within the
20 real estate documents of Vanderbilt?

21 A When you say "you," are you talking collectively or me
22 or --?

23 Q You personally.

24 A I know they provide certain things and I'm not privy to
25 those. I'm not on the operations side.

1 Q Well, you recall during your deposition me asking you what
2 the term "satisfaction" means?

3 A Yes, I do.

4 Q And you told me that satisfaction means that all of the
5 terms have been satisfied, correct?

6 A Yes. I believe I did say that.

7 Q And if we look -- and you remember looking at Defendants'
8 Exhibit 81?

9 (Pause)

10 All right. Let me show you -- you agree with me,
11 sir, that the definition of satisfied means that all the terms
12 and conditions have been met, right? That's your definition?

13 A Yes. Yes.

14 Q And if we look at Exhibit 81, we have right here VMF Land
15 and Home Financing Glossary of Real Estate Terms, correct?

16 A Yes. That's what it says, yes.

17 Q And these would be terms -- or the terms that are used
18 within Vanderbilt on land sales that would tell you what they
19 mean, right? How you're supposed to interpret them?

20 A Yes. I assume that's what that is.

21 Q And if we look, what Vanderbilt's definition of
22 satisfaction is, is what?

23 A It says, "The release of a mortgage or deed of trust."

24 Q All right. And so, when Vanderbilt -- when they're
25 talking about releasing a deed of trust, it means that the

1 terms have been met, correct? According to the definitions?

2 **MR. LOCHRIDGE:** Your Honor, I'm going to object. The
3 definitions doesn't say it. It simply says "the release of a
4 mortgage or deed of trust."

5 **MR. RUMLEY:** Let me restate it, your Honor?

6 **THE COURT:** Please.

7 **BY MR. RUMLEY:**

8 Q Mr. Jordan, you and I agree that your definition of
9 satisfaction means all the terms have been met, right?

10 A Yes. I believe that was a definition.

11 Q And if all the terms have been met, then you would release
12 the deed of trust and the mortgage, correct?

13 A Yes. If the customers made all their payments, we would
14 release the --

15 Q Well, or -- and we talked about this. There are
16 situations, are there not, where debt is charged off for
17 whatever reasons?

18 A Yes, there are those situations.

19 Q There are situations where Mr. Nichols has authority to
20 release a loan, right?

21 A Yes. He has that authority.

22 Q And you understand that Mr. Nichols is one of the
23 individuals that made the decision to file all of these
24 hundreds of releases in south Texas, true?

25 A Yes.

1 Q Mr. Jordan, back when I took your deposition, I asked you
2 if as vice president of Vanderbilt and comptroller of this
3 company you had no idea that Vanderbilt was continuing to
4 collect payments from customers in the transactions where they
5 had filed these releases, correct?

6 A I'm not a vice president of Vanderbilt.

7 Q Comptroller of Clayton Homes, Inc.

8 A Corporate controller.

9 Q Whatever your position is.

10 A Yeah.

11 Q You were not aware that Vanderbilt was continuing to
12 collect payments from customers that had transactions involved
13 where all these releases were filed, correct?

14 A Yes. I wasn't aware of any specific collection activity
15 on any specific account in my position.

16 Q Thank you, sir. That's all I have.

17 **THE COURT:** Thank you. Anything further, sir?

18 **MR. B. GUTIERREZ:** I have no questions, your Honor.

19 **THE COURT:** Anything further?

20 **MR. LOCHRIDGE:** Just a handful, your Honor, if I
21 might.

22 **THE COURT:** Go right ahead.

23 **MR. LOCHRIDGE:** Thank you very much.

24 //

25 //

1

REDIRECT EXAMINATION

2

BY MR. LOCHRIDGE:

3

Q You were asked about the Vanderbilt glossary. We've got the satisfaction, the release of a mortgage or deed of trust. Do you see that?

6

A Yes, I do.

7

Q And is that what you did when you signed that release of the deed of trust? You released the deed of trust, the lien?

9

A Yes, that's correct. Yes.

10

Q Does that have anything to do with the retail installment contract?

12

A No, it does not.

13

Q Now, I think you were just asked a question about whether or not you were aware that the people at Vanderbilt were still collecting on these retail installment contracts that hadn't been released. Would that have been something that you would have been aware of? I mean, is that part of your job?

18

A No. That's not part of my job, to monitor collection activity.

20

Q And if, in fact, the retail installment contract had not been discharged and Mr. Flores and Mr. King were still liable for it because they hadn't paid it off yet, what would you expect people in the collection part of Vanderbilt to be doing?

24

A I would expect them to be asking for payments and I would expect the owners of the homes to be making their payments.

1 Q Okay. Now, you were asked about a builder's and
2 mechanic's lien contract that had some additional language in
3 it. This is a builder's and mechanic's lien release,
4 mechanic's lien contract and the sales agreement and/or
5 contract continues to secure a bona fide obligation. In your
6 view, is that language necessary in the builder's and
7 mechanic's lien contract release?

8 A No. It is not necessary to include that.

9 Q Do you know whether or not this particular contract with
10 Ricardo Canales was the subject of litigation?

11 A No, I really don't know if it was or not.

12 Q And whether or not these documents have been negotiated
13 between lawyers representing people?

14 A No.

15 Q Okay. But going back to Exhibit 13, which is the release
16 in this case that we're dealing with, again, is there any
17 indication in there that the retail installment contract has
18 been discharged and the Kings and Floreses don't owe what they
19 promised to pay?

20 A No, there's no indication there. That's not what that
21 document does.

22 Q Did you intend that the Kings and Floreses or any of these
23 others that you signed that were still owed money under their
24 retail installment contracts didn't have to pay it anymore?
25 When you signed this release or any of the others like it, did

1 you intend that the original customers that signed that retail
2 installment contract, they didn't have to pay any more and they
3 got a free home?

4 A No, we didn't intend that at all.

5 **MR. LOCHRIDGE:** No further questions, your Honor.
6 Thank you.

7 **MR. RANGEL:** May we approach, your Honor?

8 **THE COURT:** Yes.

9 **MR. RANGEL:** I'm sorry. I apologize. I apologize.
10 I thought there were no more questions. I'm sorry,
11 Mr. Gutierrez.

12 **CROSS EXAMINATION**

13 **BY MR. B. GUTIERREZ:**

14 Q The documents that were shown to you by both Mr. Rumley
15 and Mr. Lochridge, two sets of deed of trust and two sets of
16 mechanic's lien contracts; what was identified as the Ricardo
17 Canales, Alicia Canales deed of trust and the Ricardo Canales
18 and Alicia Canales mechanic lien contract that had that
19 language; and the sales agreement and/or contract continues to
20 secure a bona fide obligation. Remember that?

21 A Yes.

22 Q Okay. Now, clearly, we looked at those documents and we
23 looked at the documents that are at issue in this case.
24 Certainly, wouldn't you agree that that is the best evidence
25 for this jury to decide the intent behind the language of the

1 document and what Vanderbilt intended to do and what CMH Homes
2 intended to do, right?

3 **MR. LOCHRIDGE:** Your Honor, again, we object because
4 he's comparing apples to oranges in a completely different
5 context trying to get him to speculate about that. We object.

6 **MR. B. GUTIERREZ:** I'm just asking, your Honor --

7 **THE COURT:** If you can't answer just say you can't
8 answer.

9 **BY MR. B. GUTIERREZ:**

10 Q You can answer.

11 A Could I hear that again, please? It was pretty long.

12 Q Talking about the best evidence for the jury to decide on
13 what the intent of Vanderbilt was and what the intent of CMH
14 Homes was, wouldn't the best evidence be to look at those
15 documents and compare the Canales documents to the documents in
16 this litigation?

17 **THE COURT:** Okay. Hold on. Is there an objection to
18 that?

19 **MR. LOCHRIDGE:** I have the same objection to that,
20 your Honor.

21 **THE COURT:** Sustained.

22 **MR. LOCHRIDGE:** Thank you.

23 **MR. B. GUTIERREZ:** That's all I have.

24 **MR. RANGEL:** May we approach, your Honor?

25 **THE COURT:** Yes, sir.

1 **MR. RANGEL:** Mr. Rumley?

2 **(Begin bench conference at 3:44 p.m.)**

3 **MR. RANGEL:** Judge, our next witness is going to be
4 Mr. Arturo Trevino.

5 **THE COURT:** He can step down, can't he?

6 **MR. RANGEL:** Yes.

7 **THE COURT:** You can stand down, sir.

8 **(Witness excused at 3:44 p.m.)**

9 **MR. RANGEL:** And there are a couple of limine motions
10 that we need to take up and one is criminal history.

11 **THE COURT:** One is what?

12 **MR. RANGEL:** Two criminal convictions; one in this
13 court and one in Judge Head's court.

14 **THE COURT:** What kind of convictions -- well,
15 obviously criminal convictions.

16 **MR. RANGEL:** Yeah. Drug trafficking and also illegal
17 alien.

18 **MR. RUMLEY:** The second one's a misdemeanor.

19 **MR. RANGEL:** The first one is --

20 **THE COURT:** No, no. If it's in my court it's not a
21 misdemeanor.

22 **MR. RANGEL:** They're felonies, both of them.

23 **THE COURT:** They're both felonies?

24 **MR. RANGEL:** You sentenced him to (indiscernible).

25 **MR. RUMLEY:** The first one was 15 years ago, so it's

1 beyond the rule. The second one was less than one year
2 (indiscernible) and it doesn't involve a crime of
3 (indiscernible).

4 **THE COURT:** If it was in my court and I sentenced
5 him, it was a felony and until you --

6 **MR. RANGEL:** Wait a minute. What I would suggest to
7 the Court that we wanted to take this up before --

8 **THE COURT:** Let's do the ten minutes.

9 **MR. RANGEL:** That's what I was going to --

10 **(End bench conference at 3:45 p.m.)**

11 **THE COURT:** Okay. We're going to take our second
12 ten-minute break and then we're going to go until about 5:15
13 today, if that's all right.

14 **THE CLERK:** All rise for the jury.

15 **THE COURT:** Which gives you another 15 minutes.

16 **(Jurors exit courtroom at 3:45 p.m.)**

17 Give us the name, please. I'm going to run it.
18 Please.

19 **MR. RANGEL:** Yes. The Cause Number in this court.
20 It's the *United States of America versus Arturo Arnulfo*
21 *Trevino*; Criminal Number C-95-107. His memorandum of plea
22 agreement was filed in this court on June 30th, 1995.

23 **THE COURT:** I don't take pleas for misdemeanors, so
24 it couldn't be a misdemeanor.

25 **MR. RANGEL:** And that was for drug trafficking, your

1 Honor. The other one is -- it was in this court, your Honor.
2 The other one was in Judge Head's court. *United States of*
3 *America versus Arturo Arnulfo Trevino*; Criminal Number C-07-
4 208; the memorandum of plea agreement filed with clerk of the
5 Court May 30th, 2007. And that was for transporting illegal
6 aliens.

7 **THE COURT:** Okay. Pull those up, would you, please,
8 with the dates?

9 **(Pause)**

10 **MR. RANGEL:** And both of them are in (indiscernible).
11 Parties Exhibit 130 which has not been admitted, your Honor.

12 **(Pause)**

13 **THE COURT:** Can you print off the docket sheet for
14 both?

15 And nobody's complaining no notice of this.

16 **MR. RANGEL:** No. They've had that. (Indiscernible)
17 filed a motion in limine.

18 **MR. RUMLEY:** We have an objection that the exhibit
19 that they filed is no proof any type of conviction. A
20 memorandum and plea agreement is not admissible as a
21 conviction. And we have additional objections under 609 and
22 403.

23 **THE COURT:** 609 what?

24 **MR. RUMLEY:** 609 and 403.

25 **THE COURT:** Okay.

1 **MR. RUMLEY:** 609 -- the first one is 15 years ago.

2 **THE COURT:** Well, it depends on when he was released;
3 it's the later date. If he was released within the last ten
4 years, that counts.

5 **MR. RANGEL:** And Judge, the record will reflect when
6 he was released, but our position is even if it's over ten
7 years, that the probative value outweighs. The Court has
8 discretion under --

9 **THE COURT:** Let's see when he was released.

10 **(Pause)**

11 What have you got? Is this Judge Head or this mine?
12 Where's the judgment? That's what I need. I don't need this.

13 **(Court confers with clerk)**

14 **MR. RUMLEY:** Your Honor, I have a copy of the
15 judgment.

16 **THE COURT:** Huh?

17 **MR. RUMLEY:** I have a copy of the judgment.

18 **THE COURT:** For the one in here?

19 **MR. RUMLEY:** Yes, your Honor. This is in Judge
20 Head's -- the recent one -- 2007.

21 **THE COURT:** 2007 is Judge Head's? Okay. Well,
22 that's obviously within the last ten years.

23 **MR. RUMLEY:** But his term of imprisonment was less
24 than --

25 **THE COURT:** Show me in 609 where it says that. What

1 are you thinking?

2 **MR. RANGEL:** It's considered a crime of dishonesty,
3 your Honor, under 609(a)(2).

4 **MR. RUMLEY:** If the crime is punishable by death or
5 imprisonment in excess of one year.

6 **THE COURT:** It doesn't mean that he was given that.
7 It meant it was a crime punishable by that. It doesn't mean
8 that he got it. It just means a crime punishable -- which
9 means it's a felony in Texas.

10 **MR. RUMLEY:** We would still object under 403.

11 **THE COURT:** You can object under 403, but you can't
12 under 609.

13 **MR. RANGEL:** The one in Judge Head's court is
14 definitely admissible under 609(a)(2), your Honor.

15 **THE COURT:** Okay.

16 **MR. RANGEL:** In both of these, your Honor, credibly
17 he is so central to this case and as have had --

18 **THE COURT:** Yes, so I've noticed.

19 **MR. RANGEL:** The jury has a right to hear this.

20 **THE COURT:** Oh, Will, look that up and make sure I'm
21 right. Thanks. Because transporting is punishable by up to
22 five years. Let me see the judgment. Yeah, transportation of
23 unlawful alien is punishable by up to five years and he was
24 sentenced to 11 months with three years supervised release.

25 Now, let me see mine. Okay.

1 **MR. J. GUTIERREZ:** Your Honor, may I address the
2 Court on one point?

3 **THE COURT:** Pardon?

4 **MR. J. GUTIERREZ:** May I address the Court on one
5 point?

6 **THE COURT:** Yes.

7 **MR. J. GUTIERREZ:** The property exhibit, your Honor,
8 is a memorandum and plea agreement. It's not evidence.

9 **THE COURT:** You all had the judgment in your hand, so
10 you obviously had notice of it.

11 **MR. J. GUTIERREZ:** No. I concede that, your Honor.
12 My point is, is this is not evidence, admissible -- because
13 it's not evidence of a conviction. The property exhibit that
14 Mr. Rangel wants offered --

15 **THE COURT:** He doesn't need to offer an exhibit.
16 He's going to impeach him with questions --

17 **MR. RANGEL:** That is correct, your Honor.

18 **THE COURT:** -- which is what I thought you were going
19 to do with the guy awhile ago instead of introducing all those
20 documents when I sustained the objection to the documents. But
21 it's neither here nor there.

22 Okay. Let me see the drug --

23 **MR. RANGEL:** Trafficking.

24 **THE COURT:** Drug trafficking.

25 **MR. RANGEL:** That was the one in your court, your

1 Honor.

2 **THE COURT:** Yeah. I just need to pull it up. I
3 don't know where she's gone.

4 **(Pause)**

5 In 1995, he was given 30 months. What's the rest of
6 his -- has he been revoked at all?

7 **(Court confers with clerk)**

8 Thanks. We're okay with the -- yeah, thank you,
9 Ms. Scotch. Well done, as usual.

10 **(Pause)**

11 **(Court confers with clerk)**

12 Are you serious? Oh, that's got to be the '07 case.
13 I needed a release date for the '95 case.

14 Thank you. Yeah, I don't think there's any point in
15 offering judgments.

16 **MR. RANGEL:** No, obviously, your Honor, I want to ask
17 him -- which I did in his deposition.

18 **(Court confers with clerk)**

19 **THE COURT:** I guess -- it looks like in the '95 case,
20 they were all released in '08, meaning from supervision. Let
21 me see what his supervised release was.

22 **(Pause)**

23 Okay. So, there's no -- Mr. Feldman?

24 **(Court confers with law clerk)**

25 **MR. RUMLEY:** Your Honor, I have a cite that says it

1 starts at the end of confinement.

2 **THE COURT:** Pardon me?

3 **MR. RUMLEY:** I have a case citation that says it
4 starts at the end of confinement.

5 **THE COURT:** But I don't know whether that supervised
6 release is considered confinement under the impeachment rule.
7 I just want to look that up.

8 **MR. RANGEL:** And our position is, Judge, is even if
9 it's after ten years it is admissible under 609(b).

10 **THE COURT:** He's your witness?

11 **MR. RANGEL:** His client, but I'm going to call him
12 now as an adverse party.

13 **THE COURT:** Oh, which one?

14 **MR. RANGEL:** Mr. Trevino, sorry. Arturo Trevino, one
15 of the intervenor plaintiffs that has sued us.

16 **THE COURT:** I thought I recognized him. Okay. He
17 wouldn't have been still on supervised release when he got the
18 next conviction.

19 **MR. RANGEL:** The second conviction was in '07.

20 **THE COURT:** You know, can I have the pre-sentence
21 investigation report for the '95 case?

22 **(Court confers with clerk)**

23 Mr. Rangel, under that it says it's not admissible
24 unless the proponent gives to the adverse party sufficient --
25 which you did.

1 **MR. RANGEL:** "Unless the Court determines, in the
2 interests of justice, that the probative value of the
3 conviction supported by specific fact and circumstances
4 substantially outweighs its prejudicial effect," if it's past
5 ten years.

6 **THE COURT:** My concern is this and I'll tell you. He
7 got 30 months on something that was a mandatory minimum of five
8 years, which means he had to give substantial assistance and
9 then I could have given him minor role.

10 **MR. RANGEL:** But your Honor, I think you have to
11 consider what happened in that case with what happened later.
12 I mean, we're talking about 200 pounds of marijuana and then
13 the illegal trafficking. I mean, obviously, combined it raises
14 issues of credibility that the jury needs to know about because
15 it's clear that he was -- after the first conviction and
16 sentenced by this Court -- I mean, that was not strong medicine
17 enough and he proceeded to engage in additional illegal
18 activity resulting in felony convictions in this federal
19 courthouse where he is seeking to recover damages.

20 **THE COURT:** In contrast to another federal
21 courthouse.

22 **MR. RUMLEY:** Your Honor, it has zero probative value
23 and it's completely prejudicial and all they're trying to do is
24 offer something that happened 15 years ago. And the cases make
25 the distinction between admission in criminal cases and in

1 civil cases and there is zero probative value. And the
2 prejudice that this is going to cause, this jury's going to
3 make their mind up based on that conviction and not of the
4 evidence. And that's the prejudice that's involved and that's
5 the prejudice that's set out in 609.

6 **MR. RANGEL:** The probative value goes to credibility.
7 Credibility of -- his credibility is going to be an issue when
8 he gets up here and denies that his signature is in any of
9 those documents, when he denies that he didn't know anything
10 about that land being pledged.

11 And we're going to have Mr. Stuart come forward and
12 say that high indication that he did sign. They're going to
13 deny it. Their expert will say he did not sign.

14 Judge, if it was only one conviction, I could
15 understand, but here we have two convictions. If that does not
16 demonstrate a willingness to engage in illegal activity -- of
17 course, the second one's in because with the ten years in the
18 illegal alien trafficking; but when you combine his conviction
19 in this court for 200 pounds of marijuana, Judge, we are
20 entitled and, with all due respect, we understand that the
21 Court has listened to all the objections and the motions and
22 the Court is doing what the Court believes is fair and we think
23 that in this instance --

24 **THE COURT:** I just don't know what's fair in this
25 case. And I'll tell you why, because both times he came in and

1 pled guilty and at least the first time in my court. In my
2 case, he cooperated truthfully. And so, the reason for
3 impeachment is to talk about his character and his propensity
4 to tell the truth. Isn't that what the impeachment would be?
5 And he's -- as far as I'm concerned -- he's done nothing in
6 these cases but to speak the truth.

7 **MR. RANGEL:** But Judge, he is --

8 **THE COURT:** I understand he committed a crime.

9 **MR. RANGEL:** Two crimes.

10 **THE COURT:** Two crimes, but I'm talking about that
11 it's supposed to be used for whether or not he tells the truth.

12 **MR. RANGEL:** And certainly, Judge, the second
13 conviction -- trafficking --

14 **THE COURT:** That's absolutely in.

15 **MR. RANGEL:** Okay.

16 **THE COURT:** The transporting illegal aliens, which
17 many people feel is a much bigger crime than drug trafficking.
18 But don't get me started on that. Not that drug trafficking is
19 not a crime, but you know, these people are endangered; they
20 make more money trafficking in people. Did you know that? You
21 make more money trafficking in people than in drugs? And these
22 people that are trafficked are kidnapped from one group to
23 another and held hostage. It's very unpleasant.

24 Anyway, I think you ought to go with the one, which
25 is significant. I may be wrong about this, Mr. Rangel, but --

1 **MR. RANGEL:** I respect the Court's ruling. I just
2 think that given the facts and circumstances and the issue in
3 this case that we're entitled to present evidence of both
4 convictions to the jury.

5 **THE COURT:** You may be right, but my other concern is
6 that they were 12 years apart. The convictions were 12 years
7 apart. And so, I have a concern about that, as well. If there
8 were 15 convictions or even three, you know, every five years
9 for 15 years, I think I would treat it differently.

10 **MR. RANGEL:** I understand.

11 **THE COURT:** So, that's my ruling.

12 **MR. RANGEL:** Okay. We'll go with the second -- with
13 the recent --

14 **THE COURT:** Absolutely. You're entitled to that.

15 **MR. RANGEL:** And there are two other matters, Judge.

16 **THE COURT:** And if he ever says he's never been on
17 281, you might get the other one on.

18 **MR. RANGEL:** There are two other issues that are
19 covered by the limine. We have evidence that in the summer of
20 2003, Mr. and Mrs. Trevino conveyed Lot 35 to their brother,
21 Gilbert Flores -- summer of 2003. And that coincides with the
22 time about when Mr. King was calling and asking --

23 **THE COURT:** About releasing 36?

24 **MR. RANGEL:** Releasing one of the lots.

25 **THE COURT:** Okay.

1 **MR. RANGEL:** And so --

2 **THE COURT:** Are they both -- the both have a lien or
3 just 36?

4 **MR. RANGEL:** Both of them had liens.

5 **THE COURT:** Okay. Allegedly.

6 **MR. RANGEL:** Right. And so, we want to show the
7 conveyance from the Trevinos to Gilbert of Lot 35 in July 2003.
8 Plus, in the spring of 2005, they conveyed Lot 36 to Cesar
9 Flores. So, they no longer owned these two lots at the time
10 that the releases were signed.

11 **THE COURT:** Mr. Rumley?

12 **MR. RUMLEY:** Your Honor, this is the argument they
13 made in their summary judgment and that the Court found that
14 they did have standing and my objection is --

15 **THE COURT:** No, it's not a question of standing.
16 It's a question of -- go ahead.

17 **MR. RUMLEY:** It's my objection is under 403, because
18 it's misleading. What they're going to say is at the time you
19 filed this intervention you didn't own the land. Well, that's
20 not what the statute says. The statute does not require them
21 to own the land. And what they're going to do --

22 **THE COURT:** You know what? I don't think that the
23 Lot 35 has any probative value. Thirty-six does, for damages.
24 How much were they damaged if they transferred the property?

25 **MR. RANGEL:** Judge, the reason 35 is pertinent --

1 **THE COURT:** And I've already ruled that that is a
2 damage. It's how much of a damage and the jury's entitled to
3 hear that.

4 **MR. RANGEL:** At the time that they filed the lawsuit,
5 they did not own Lot 36. They did not own Lot 35. At the time
6 that the releases were filed, they didn't own either one of
7 them. And the evidence is going to show that during the time
8 that the lien was on file, that that did not keep them from
9 conveying or selling. They never attempted to do that. They
10 would convey 35 to Gilbert and convey 36 to Cesar. I think on
11 the issue --

12 **THE COURT:** Yeah, but their testimony is they didn't
13 even know there was a lien.

14 **MR. RANGEL:** Well, but there was no damage, no harm.

15 **THE COURT:** That's not true. Because under the
16 statute it's not required to have that -- that is damage in
17 itself, filing a false lien.

18 **MR. RUMLEY:** And that's why under 403 it's going to
19 confuse the jury and mislead them if he presents it like that.

20 **THE COURT:** No. They need to know, I think, it's
21 well within the jury's prerogative to know whether or not the
22 people are still suffering with the land and can't transfer it.
23 They've transferred it, the lien's been released. It doesn't
24 mean no harm no foul, which is what they're going to say,
25 because you get a measure of damage for a false lien. Period.

1 Okay. Are we settled on all these things?

2 **MR. RANGEL:** And we won't dwell on it, Judge. We
3 just want to put that before the jury.

4 **MR. B. GUTIERREZ:** And your Honor, may I just ask a
5 question?

6 **THE COURT:** Yes, sir.

7 **MR. B. GUTIERREZ:** Concerning the question that Mr.--

8 **THE COURT:** I don't think you're supposed to ask me
9 questions. Go ahead.

10 **MR. B. GUTIERREZ:** I'm just concerned -- the question
11 that Mr. Rangel is going to be permitted to ask Mr. Trevino
12 with respect to the transporting of illegal aliens --

13 **THE COURT:** Yes.

14 **MR. B. GUTIERREZ:** -- well, will he be permitted to
15 ask, "Have you ever been arrested?" I'm just --

16 **THE COURT:** No. That's not an impeachment question.
17 It's a conviction of crime of moral turpitude, which means, you
18 know, other than a felony; a crime of moral turpitude, which is
19 a theft conviction as a misdemeanor; false swearing, you know,
20 that sort of thing. And then, it's absolutely allowed to do
21 the felony conviction within ten years.

22 **MR. RUMLEY:** I think what he's asking is, is he
23 entitled to get into the whole thing or is he just -- he's
24 entitled to say, "Were you convicted of this," and then that's
25 the --

1 **THE COURT:** You can't. If he denies that he was
2 convicted, that's a different story.

3 **MR. UNIDENTIFIED:** I'm sorry?

4 **THE COURT:** If he denies that he was convicted for
5 transporting illegal aliens, I think that's a different story.

6 **MR. RANGEL:** I mean, I am able to get before the jury
7 that he was convicted.

8 **THE COURT:** Yes. But you can't go into it. How many
9 aliens and --?

10 **MR. RANGEL:** No, I'm not going to go into the
11 details.

12 **THE COURT:** Okay.

13 **MR. RANGEL:** No.

14 **THE COURT:** Especially not details I gave you.

15 **MR. RANGEL:** Okay. So, that takes care of the
16 matters so when we have Trevino I will admit into evidence the
17 two warranty deeds and ask for --

18 **THE COURT:** Are we ready?

19 **MR. RANGEL:** Can I take a two-minute break, Judge.

20 **THE COURT:** Wait. You don't need to put into
21 evidence the warranty deeds. You're going to call them as
22 witnesses and they're going to say, "Yes, they've been
23 transferred." That's it.

24 **MR. RANGEL:** Well, there's another issue with --
25 there's an issue of notarization on one of those two. I want

1 to find out. I think it's the one to Gilbert Flores. They
2 conveyed Lot 35 to Gilbert Flores and it's supposedly signed by
3 Mr. Trevino and Mrs. Trevino. The notary said, "Before me, on
4 this date, appeared Cesar Flores and Alvin King." It doesn't
5 say appeared Arturo Trevino and Maria Trevino. And I think
6 there are issues of notary practices.

7 **THE COURT:** That has nothing to do with this case,
8 that however defective their transfer was. And if you really
9 had a good lien, it was still defective.

10 **MR. RANGEL:** So, the deeds do not come in but I can
11 ask him about the conveyances?

12 **THE COURT:** Absolutely.

13 **MR. RANGEL:** Thank you, your Honor.

14 **THE COURT:** And if they deny them, that's another
15 thing.

16 **MR. RANGEL:** May I have two minutes, Judge?

17 **THE COURT:** Yes.

18 **MR. LOCHRIDGE:** Your Honor, on that last point, those
19 signatures will be used as --

20 **THE COURT:** I'm sorry?

21 **MR. LOCHRIDGE:** Those signatures of Mrs. Trevino,
22 Mr. Trevino to the --

23 **THE COURT:** Oh, will be used for the --

24 **MR. LOCHRIDGE:** Will be used by the handwriting
25 people.

1 **THE COURT:** Okay.

2 **MR. LOCHRIDGE:** And if that -- if you're still of
3 that mind when we get there, we'll need to do some redacting of
4 some kind, because they'll maybe use those handwritings
5 exemplar as known -- but if they say that --

6 **THE COURT:** Well, do you have objections to the
7 conveyances?

8 **MR. RUMLEY:** I have objections to those documents for
9 the reasons that we talked about. I think their expert just,
10 like, cut out that signature and is looking at --

11 **MR. LOCHRIDGE:** Yeah, there's two things. But it's
12 also the --

13 **THE COURT:** I don't see any reason that he can't show
14 the signatures without showing the document in its entirety.
15 And just say, "I got this off of the transfer."

16 **MR. LOCHRIDGE:** Yes, your Honor. And some of the
17 other --

18 **(Court confers with clerk)**

19 **THE COURT:** Thank you very much.

20 **MR. LOCHRIDGE:** On the plea agreement on the '95
21 conviction, there's also an exemplar that the handwriting
22 expert uses. He will redact that to say it's a court document.

23 **MR. RUMLEY:** We still have an objection to that.

24 **THE COURT:** Why?

25 **MR. RUMLEY:** Well, because, I mean, how --?

1 **THE COURT:** How'd they get it? How did they get it,
2 by the way?

3 **MR. RUMLEY:** But how are you going to explain that
4 it's a genuine signature without going into the fact that it's
5 (indiscernible)?

6 **THE COURT:** Are you going to deny it's a genuine --?

7 **MR. RUMLEY:** No. But their expert wants to use it
8 only because -- this expert has probably 15 exemplar
9 signatures, but he wants to use that one because it's a plea
10 agreement.

11 **THE COURT:** Well, he's not going to.

12 **MR. LOCHRIDGE:** No. The reason --

13 **THE COURT:** He just says, "Look. I got this as part
14 of the court documents." Doesn't say what court documents.
15 and just take it out, take the signature out without mentioning
16 it was on the plea agreement for the 1995 drug trafficking
17 case.

18 **MR. LOCHRIDGE:** We're not going to do that, Judge.
19 We're not going to flimflam it at all, but we are going to call
20 it a court document because that's important to these examiners
21 knowing it's an official document.

22 **THE COURT:** You can call it a court document.

23 **MR. LOCHRIDGE:** Okay.

24 **MR. RUMLEY:** No problem.

25 **THE COURT:** Okay. What else? Are we ready? Just

1 waiting for Mr. Rangel?

2 **MR. RUMLEY:** I'll be right back.

3 **THE COURT:** Go right ahead. Everybody gets to go but
4 us.

5 In the '95 case, he was released on supervised
6 release in '97, did you say?

7 **(Court confers with clerk)**

8 Close in 2001, okay. He was released on supervised
9 release in '97.

10 **(Court confers with clerk)**

11 **(Pause)**

12 Okay. Bring in the jury, please.

13 **MR. RANGEL:** Your Honor, can he take the stand?

14 **THE COURT:** Pardon?

15 **MR. RANGEL:** Can Mr. Trevino take the stand right
16 now, your Honor?

17 **THE COURT:** Call him in front of the jury.

18 **THE CLERK:** We're still missing Mr. Lochridge.

19 **THE COURT:** No, that's okay. Bring them in. He has
20 special dispensation.

21 **THE CLERK:** All rise for the jury.

22 **(Jurors enter courtroom at 4:18 p.m.)**

23 **THE COURT:** Thank you. You may be seated.

24 **MR. RANGEL:** We would call Mr. Arturo Trevino.

25 **THE COURT:** Would you come forward, please, sir?

Trevino - Direct / By Mr. Rangel

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1 Would you administer the oath, Ms. Scotch?

2 **ARTURO TREVINO, PLAINTIFFS' WITNESS, SWORN**

3 **DIRECT EXAMINATION**

4 **BY MR. RANGEL:**

5 Q Good afternoon, Mr. Trevino.

6 A Good afternoon, sir.

7 Q Will you state your full name for the record?

8 A Arturo Arnulfo Trevino.

9 Q And where do you live, Mr. Trevino?

10 A Premont, Texas.

11 Q How long have you lived in Premont, Texas?

12 A About seven years.

13 Q And are you the same Arturo Trevino who has filed a claim
14 against my clients, Vanderbilt, CHI and CMH Homes?

15 A Yes, sir.

16 Q And we met before when I took your deposition, correct?

17 A Yes, sir.

18 Q Now, are you married to Maria Trevino?

19 A Yes, sir.

20 Q How long have you been married to Maria Trevino?

21 A We were married for about six years. We've been -- we're
22 separated now, but we've been married for, I don't know, 11
23 years.

24 Q And how long have you been separated?

25 A About four -- four or five years.

1 Q And so, you've been living separately for four or five
2 years?

3 A Yes, sir.

4 Q And tell us a little bit about where you grew up, went to
5 school?

6 A I grew up in Falfurrias, Texas; went to school in
7 Falfurrias; got married back in '77; got divorced. Worked in
8 the oil field.

9 Q And did you -- after going through the public school, did
10 you graduate from high school, Mr. Trevino?

11 A Yes, sir.

12 Q In Falfurrias?

13 A Yes, sir.

14 Q After you graduated, what kind of jobs did you have?

15 A Insulator helper, tire shop, and oil field.

16 Q And you had a variety of jobs with different companies in
17 south Texas?

18 A Yes, sir.

19 Q And what kind of work did you do in the oil field?

20 A Roughneck. Drilling for oil and gas.

21 Q And what were some of the companies that you worked for?

22 A I worked for Craig's Drilling out of Alice; Pride Oil
23 Well; Diamond M; Grey Wolf. I can't recall the other ones.

24 Q Are you currently employed?

25 A No, sir. I'm working self-employed.

1 Q When was the last time that you were fully employed?

2 A Last year, back in early part of last year.

3 Q Back in 2007, Mr. Trevino, were you convicted for
4 smuggling illegal aliens?

5 A Yes, sir.

6 Q And where did that conviction take place?

7 A What do you mean where? Here in Corpus?

8 Q Was in this courthouse?

9 A This courthouse, yes, sir.

10 Q And who was the presiding judge?

11 A Head.

12 Q And did you serve time in a federal facility?

13 A Detention center, Falfurrias.

14 Q Mr. Trevino, are you Cesar Flores' brother-in-law?

15 A Yes, sir.

16 Q And do you also know Mr. Alvin King?

17 A Yes, sir.

18 Q When did you meet Mr. King?

19 A I can't recall, but 2000, 2005. I can't recall.

20 Q Okay. Would you say that over the years, during the time
21 that you've been married to Maria Trevino, that you've been
22 close to Cesar Flores?

23 A No, sir.

24 Q You've seen him from time to time?

25 A Lately, I never seen him and never see him before. Once

1 in a while.

2 Q Going back to 2001, late 2001, did you become aware that
3 he was interested in purchasing a mobile home?

4 A No, sir.

5 THE COURT: I'm sorry. When was this?

6 MR. RANGEL: I'm sorry?

7 THE COURT: When?

8 MR. RANGEL: December 2001.

9 THE COURT: Thank you. I'm sorry.

10 BY MR. RANGEL:

11 Q At some point, you became aware that Cesar Flores was
12 interested or looking to buy a mobile home. Is that correct?

13 A Right.

14 Q And you found out about that because Maria Trevino called
15 you and said that Cesar, her brother, wanted to place a mobile
16 home on property that you and Maria owned. Is that correct?

17 A Correct.

18 Q In December 2001, you and Maria Trevino owned Lots 35 and
19 36 there in Alice, Texas in the Galimore area, right?

20 A Thirty-four, 35 and 36.

21 Q You owned three of them?

22 A Three of them.

23 Q Okay. And Lot 36 was empty.

24 A Correct.

25 Q And when Maria Trevino told you that Cesar Flores wanted

1 to place the mobile home on that Lot 36, she called you because
2 she wanted to know whether it was okay with you, correct?

3 A Correct, sir.

4 Q And she told you that she had already spoken with her
5 brother Cesar and she had told Cesar it was okay to place the
6 mobile home on Lot 36, correct?

7 A Correct.

8 Q And did you tell Maria that it was okay with you, also?

9 A Yes, sir.

10 Q When Maria Trevino told you that she had spoken with Cesar
11 about placing the mobile home on that lot, did she tell you
12 that she was excited about it?

13 A I can't remember.

14 Q But she told you it would be okay with her?

15 A Yeah.

16 Q And do you recall actually meeting with Cesar Flores to
17 discuss whether he could place the mobile home on the lot or
18 did he just meet or speak with Maria?

19 A I don't remember.

20 Q Okay. And what was it that Maria Trevino told you as far
21 as placing the mobile home on that lot?

22 A That it was okay if Cesar could put a trailer house there.

23 Q And incidentally, that Lot 36 and Lot 35 had been conveyed
24 to you and Maria Trevino by Jesusa and David Cantu, correct?

25 A Correct.

1 Q And Jesusa Flores Cantu was Maria Trevino's sister and was
2 Cesar Flores' sister?

3 A Correct.

4 Q So, after Maria Trevino told you that Cesar Flores wanted
5 to place the mobile home on that lot, you said it was okay and
6 did you have any more conversations with him about that?

7 A No, sir.

8 Q Did Maria Trevino tell you anything else about a
9 conversation that she had with Cesar Flores?

10 A No, sir.

11 Q Did you have more than one conversation with Maria Trevino
12 about that or was that the only conversation?

13 A I can't remember.

14 Q When was it that you became aware that the mobile home had
15 actually been placed on the lot?

16 A I can't remember. It was already parked there when I saw
17 it the first.

18 Q So, did you go to Alice to visit Cesar or did you just
19 happen to be in town?

20 A I just happened to be in town, I think. I'm not too sure,
21 but --

22 Q And did you have any conversation with Cesar about the
23 mobile home after you had told Maria that it was okay for the
24 mobile home to be placed there?

25 A No, sir.

1 Q Okay. When you did see the mobile home there, what did
2 you see?

3 A A mobile home.

4 Q Did you see Mr. Flores? Did you see Mr. King?

5 A No.

6 Q Okay. Did Mr. Flores -- or did Maria Trevino tell you
7 that Mr. Flores had said anything about having to sign any
8 documents in order for -- in connection with the home being
9 placed at the lot?

10 A No, sir.

11 Q Okay. I will pull up -- ask that CP Exhibit 209 --

12 Mr. Trevino, do you recognize this as a builder's and
13 mechanic's lien contract that I showed you during your
14 deposition?

15 A Yes, sir.

16 Q And if you'll go to the signature page. On that page,
17 there is a signature line for Arturo Trevino and a signature
18 line for Maria Trevino, correct?

19 A Correct, sir.

20 Q And right below your -- or the signs Arturo Trevino there
21 is printed Arturo Trevino. Is that correct?

22 A Correct, sir.

23 Q And it's your testimony that that is not your signature,
24 correct?

25 A Correct.

1 Q And it's your testimony that you didn't print your name
2 underneath the signature of Arturo Trevino. Is that correct?

3 A Correct, sir.

4 Q And you don't know who did, correct?

5 A No, sir.

6 Q I mean, you're saying that you didn't sign that, but you
7 don't know who signed your name and, in fact, that's not your
8 signature, correct?

9 A That's correct, sir.

10 Q Incidentally, what is the date -- January 7th, 2002,
11 correct?

12 A Correct.

13 Q Okay. We'll go to the property description. I think it's
14 on the last page, property description.

15 Lot 35 and 36, Block 1, Galimore Addition; those are
16 the two lots that we talked about earlier, correct?

17 A Correct, sir.

18 Q Now, sitting here today, you no longer own Lot 35 and Lot
19 36, correct?

20 A Correct.

21 Q In fact, in the summer of 2003, you and Maria conveyed Lot
22 35 to Maria's brother Gilberto Flores, correct?

23 A Correct.

24 Q I think July 2003?

25 A I can't recall.

1 Q Just about that time, correct?

2 A Correct.

3 Q And in the spring of 2005, you and Maria conveyed Lot 36
4 to Cesar Flores, correct?

5 A Correct.

6 Q And so, today you and Maria Trevino no longer own those
7 two lots, right?

8 A Correct.

9 Q And when you filed your intervention lawsuit against my
10 clients Vanderbilt, CHI and CMS Homes in 2009, you and Maria
11 Trevino did not own Lots 35 and 36, correct?

12 A Correct.

13 Q Let's look at CP Exhibit 3. And this is another document
14 that I showed you during your deposition. Is that correct,
15 Mr. Trevino?

16 A Correct.

17 Q And we'll go to the signature page and there, there is a
18 signature of Maria Trevino and a signature for Arturo Trevino,
19 correct?

20 A Correct, sir.

21 Q And it's your testimony that you did not sign the
22 signature of Arturo Trevino shown there, correct?

23 A Correct, sir.

24 Q And it's your testimony that you didn't print Arturo
25 Trevino underneath that signature line of Arturo Trevino,

1 correct?

2 A Correct, sir.

3 Q And if you didn't do it, you don't know who did, correct?

4 A Correct.

5 Q Now, we'll turn to CP Exhibit 9 at 5563. And this is
6 another document that you saw at your deposition, a real estate
7 lease, correct?

8 A Correct, sir.

9 Q And we'll go to the signature page. And again, there is a
10 signature for Arturo Trevino and a signature for Maria Trevino,
11 correct?

12 A Correct.

13 Q And it's your testimony that the signature there -- the
14 second signature which appears to say Arturo Trevino -- that
15 you didn't sign your signature there, correct?

16 A Correct.

17 Q And you don't -- that is not your signature. You don't
18 know who signed here.

19 A No, sir. Right.

20 Q Okay. And these documents I've been showing you with
21 Maria Trevino, you're not sufficiently familiar with her
22 signature to know whether that is her signature, right?

23 A Correct, sir.

24 Q Okay. Then I think there may be -- is that page 5? Same
25 document, there's a signature line for Maria Trevino and Arturo

1 Trevino and it's your testimony that that's not -- you didn't
2 sign your signature there. Is that correct?

3 A I don't think that's my signature.

4 Q You don't think it's your signature and if it's not your
5 signature, you don't know who signed your signature, correct?

6 A Correct, sir.

7 Q And the same thing with Maria Trevino. You're not
8 sufficiently familiar with her signature to know whether she
9 signed it. Is that correct?

10 A Correct.

11 Q Now, when we took your deposition, Mr. Trevino, we asked
12 you to sign your name on ten different pages, correct?

13 A Correct, sir.

14 Q And I think that's CP Exhibit 155. And is this the first
15 page of the ten pages with your signature? You remember
16 signing the documents?

17 A I remember signing.

18 Q Remember signing your name?

19 A Yes, sir, I remember.

20 Q And remember that I asked you that sometimes your name
21 appears in some documents as Arturo Trevino, Arturo Arnulfo
22 Trevino, Arturo A. Trevino, and I asked you when -- how you
23 would sign your name whenever there was a middle initial or
24 whether the middle name was spelled out. And what was your
25 testimony then?

1 A That I usually decided -- like if you said Arturo Arnulfo,
2 I'd put Arturo A. Trevino. And when they would say just Arturo
3 Trevino, I would put Arturo Trevino.

4 Q So, it depends on whether you're being asked to sign a
5 document that has Arturo Arnulfo Trevino or Arturo A. Trevino
6 or just Arturo Trevino; however you've been asked --

7 A Correct, sir.

8 Q -- on the signature line, that's how you would sign it.
9 Is that correct?

10 A Correct.

11 Q Is that correct?

12 A Yes, sir.

13 Q Okay. Now, let's go to property owner's agreement, CP
14 Exhibit 9 at page 42. There do you see two signatures of Maria
15 Trevino and Arturo Trevino?

16 A Yes, sir.

17 Q And it's your testimony that the signature of Arturo
18 Trevino there is not your signature, correct?

19 A Think so.

20 Q You don't think that it's your signature?

21 A Well, I'm not sure, sir.

22 Q Okay. And if it's not your signature, you don't know who
23 signed your signature, correct?

24 A Correct.

25 Q You're just not sure whether that's your signature. Is

1 that correct?

2 A Correct.

3 Q And the same thing with Maria Trevino? You're not
4 sufficiently familiar with her signature to tell this jury
5 whether or not that's her signature?

6 A Correct, sir.

7 **(Pause)**

8 Q If we'll call up the deed of trust. I think I showed you
9 this document, Mr. Trevino, earlier and this was -- I think
10 there's a date of January 7th, 2002. While this deed of trust
11 document did not keep you from conveying Lot 35 to Gilbert
12 Flores or Lot 36 to Cesar Flores, correct?

13 A Correct, sir.

14 Q You were able to do that, correct?

15 A Correct.

16 Q And between the time that this deed of trust was signed
17 and filed in January of 2002, and the date that you conveyed
18 Lot 35 to Gilbert Flores in 2003 and the date that you conveyed
19 Lot 36 to Cesar Flores, you and Maria Trevino never attempted
20 to sell or convey Lots 35 and 36 to anyone. Is that correct?

21 A Correct.

22 Q Pull up the builder's and mechanic's lien, please.

23 And again, the date on this builder's and mechanic's
24 lien was January 7, 2002 and after this builder's and
25 mechanic's lien was filed, between that date and January '02

1 and the date that you conveyed Lot 35 to Gilbert Flores in July
2 2003 and Lot 36 to Cesar Flores in the spring of 2005, you and
3 Maria Trevino never attempted to sell or convey those two lots
4 to anyone. Is that correct?

5 A Correct.

6 Q Pull up the builder's and mechanic's lien release.

7 This is another document that I showed you during
8 your deposition, correct, Mr. Trevino?

9 A Correct.

10 Q And the date on this is October 8, 2005, correct?

11 A Correct, sir.

12 Q And it refers to Lot 35 and 36, correct?

13 A Correct.

14 Q These are the two lots we've been talking about; the lots
15 that you and Maria Trevino owned that you conveyed to your
16 brother-in-law Gilbert and brother-in-law Cesar, correct?

17 A Correct.

18 Q On the date that this mechanic's lien release was signed
19 and filed -- October 8th, 2005 -- you and Maria Trevino were no
20 longer the owners of Lot 35 and 36, correct?

21 A I don't know about Lot 36, but Lot 35, yes. I can't
22 remember Lot 36.

23 Q Do you recall that you conveyed Lot --?

24 A Thirty-five. Thirty-six in 2005, but I don't know what
25 month.

1 Q Okay. You do recall that it was the spring of 2005 that
2 you conveyed Lot 36 to your brother Cesar.

3 A I can't recall if spring, but it was 2005.

4 Q Prior to October 8th, 2005?

5 A It could have -- I don't know, sir.

6 MR. RANGEL: Judge, may we approach?

7 THE COURT: Absolutely.

8 (Begin bench conference at 4:42 p.m.)

9 MR. RANGEL: Since he's uncertain, we'd like to offer
10 the deed showing that they conveyed Lot 36 to Cesar Flores, I
11 believe it was in April 2005. He's ambivalent about it.

12 MR. RUMLEY: We object under the same grounds, under
13 403, because it's confusing; it misleads the jury as to --

14 THE COURT: Why don't you just stipulate
15 (indiscernible).

16 MR. RUMLEY: He has admitted that he conveyed --

17 MR. RANGEL: I just want to --

18 MR. RUMLEY: And that's why. Under 403, that's why
19 I'm objecting, because he's using him in a prejudicial way
20 versus just a fact.

21 MR. RANGEL: I'm just trying to pinpoint the --

22 THE COURT: When did he say it was transferred?

23 MR. RANGEL: He said in the spring.

24 MR. RUMLEY: He said in '05.

25 MR. RANGEL: No, but I've got to pinpoint the date.

1 It was in the spring of 2005. I want to pinpoint that it was
2 prior to the date that was --

3 **MR. RUMLEY:** Spring is before October.

4 **THE COURT:** Just ask him if it was prior to the date.

5 **(End bench conference at 4:43 p.m.)**

6 **BY MR. RANGEL:**

7 Q Mr. Trevino, the mechanic's lien release, the date on that
8 is October 8th, 2005, correct?

9 A Correct, sir.

10 Q Prior to that date, some months before, you had already
11 conveyed Lot 36 to your brother-in-law Cesar Flores, correct?

12 A I think so, sir.

13 Q And also prior to that date in 2003, you had already
14 conveyed Lot 35 to your brother-in-law Gilbert, correct?

15 A Correct.

16 Q Is that correct?

17 A Yes, sir.

18 Q So, on the date that this mechanic's lien release was
19 filed on October 8th, 2005, you and Maria Trevino no longer
20 owned Lots 35 and 36. Is that correct?

21 A Correct.

22 Q Pull up the deed of trust release.

23 Mr. Trevino, another document you saw at your
24 deposition, correct?

25 A Yes, sir.

1 Q And the date on this deed of trust release again is
2 October 8th, 2005. Is that correct?

3 A Correct.

4 Q And the property described Lots 35 and 36 of Block 1,
5 Galimore Addition, correct?

6 A Correct.

7 Q Okay. Prior to October 8th, 2005, when this deed of trust
8 release was filed, you had already conveyed Lot 35 to your
9 brother-in-law Gilbert Flores in July 2003, correct?

10 A Correct.

11 Q And prior to this deed of trust release being filed on
12 October 8th, 2005, you had -- months before in 2005 -- already
13 conveyed Lot 36 to your brother-in-law Cesar Flores, correct?

14 A Yes, sir.

15 Q So, on the date that this deed of trust release was filed,
16 October 8th, 2005, you and Maria Trevino no longer owned Lots
17 35 and 36. Is that correct?

18 A Right.

19 **MR. RANGEL:** Judge, subject to recalling the witness
20 when he is called in Mr. Rumley's case in chief, I would pass
21 the witness.

22 **THE COURT:** Thank you, sir.

23 //

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. B. GUTIERREZ:**

3 Q Mr. Trevino, did you or Maria Trevino ever go to a Clayton
4 Homes store here in Corpus Christi?

5 A No, sir.

6 Q Do you know an individual, or have you ever met an
7 individual, by the name of Benjamin Frazier?

8 A No, sir.

9 Q If we look at the deed of trust that you had told us --

10 **THE COURT:** Must be on computer. Thank you.

11 **BY MR. B. GUTIERREZ:**

12 Q And we can look at -- we've already seen the signatures.
13 You've testified that's not your signature, but the date of the
14 document, this is Exhibit Number 6, if we look at the language
15 on there, it starts at the top, Maria M. Trevino, Arturo
16 Trevino -- do you see that?

17 A Yes, sir.

18 Q And it refers to you as -- see where it says "grantor"?

19 A Yes, sir.

20 Q Have you ever met this individual, Kevin T. Clayton?

21 A No, sir.

22 Q Did you ever grant or sell or convey your property to this
23 individual, Kevin T. Clayton?

24 A No, sir.

25 Q If we go further down, it says, "This conveyance" -- can

1 you read that?

2 A Yes, sir.

3 Q "... however, is made in trust to secure payment of one
4 retail installment contract of even date." See where it says
5 "even date"?

6 A Yes, sir.

7 Q It's talking about according to what it says there,
8 January 7th. Do you see that?

9 A Yes, sir.

10 Q Did you ever sign any retail installment contract?

11 A No, sir.

12 Q Do you see how it says, "This conveyance, however, is made
13 in trust to secure payment of one retail installment contract
14 of even date herewith in the principal sum" -- and here, it
15 looked like it says \$40,815.19 -- or 98, I can't tell. Then it
16 says \$73,641.60. And it says "executed by" -- what does it say
17 there?

18 A Grantor.

19 Q And it identifies you and Maria as grantor. Have you ever
20 seen any contract -- did you ever sign any retail contract
21 agreeing to pay this kind of money --

22 A No, sir.

23 Q -- to this individual or to anyone at Vanderbilt Mortgage
24 and Finance?

25 A No, sir.

1 Q If we look at this page 1, right? That's page 1. See how
2 this page ends in the sentence "provided," and then it says
3 "period," right?

4 A Yes, sir.

5 Q Then we go -- let's go to page 2. Page 2, and as we go,
6 continuing, it ends with "indebtedness secured by," and we flip
7 over -- just go on, page by page, to see if they're in
8 sequence, okay? "Shall at" -- and this is the page that I want
9 to show you, page 4. Page 4 of this deed of trust and where it
10 says, "As a condition of such consent, however." Then it
11 starts with 8 -- doesn't appear to be -- does it make any
12 sense?

13 A No, sir.

14 Q Have you ever seen this retail installment contract
15 they're talking about?

16 A No, sir.

17 Q Will you look at Exhibit Number 7, the builder's and
18 mechanic's lien contract? Do you see that?

19 A Yes, I do.

20 Q Now, it identifies yourself, Arturo, and Marie M. Trevino
21 as owners. Do you see that?

22 A Yes, sir.

23 Q Then as we go to the bottom, it says, "Owner agrees to pay
24 contract in the sum of \$40,815.19," and it talks about contract
25 price. See that?

1 A Yes, sir.

2 Q And then it ends here, says, "Owner shall pay the contract
3 price pursuant to the terms of a retail installment contract
4 executed by owner and contractor on even date herewith." Did
5 you ever sign any retail installment contract or agree to pay
6 this kind of money?

7 A No, sir.

8 Q Talks about "even date herewith." Let me see -- I think
9 we've seen this before. The jury has seen it. This is January
10 the 7th. Is that correct?

11 A Correct, sir.

12 Q You've already told us that you did not sign this
13 document. You did not sign the deed of trust. Is that
14 correct?

15 A Correct, sir.

16 Q The other document that was shown to you was a real estate
17 lease.

18 **(Attorneys confer)**

19 **MR. RANGEL:** He was asking for the page number, your
20 Honor. I was helping him.

21 **THE COURT:** It's no problem. Thank you.

22 **BY MR. B. GUTIERREZ:**

23 Q Where were you living back in January of 2005? Where were
24 you living? Do you remember? In January?

25 A Of '05? Premont.

1 Q In Premont. What was your address in Premont?

2 A 504 North Donald.

3 Q Let me show you the real estate lease that Mr. Rangel was
4 showing you awhile ago. Now, this purports to be a real estate
5 lease where you and Maria -- and I've just been corrected. I
6 asked you where you living in 2005. Where were you living in
7 2002?

8 A Premont.

9 Q Premont. The same address?

10 A No, sir.

11 Q Do you remember?

12 A I don't remember. Fifth Street somewhere northeast.

13 Q Okay. Okay. In looking at the real estate lease, you've
14 seen some signatures. They've asked you if that's your
15 signature. You don't think so. But the question that I have
16 is that this document purports to identify you and Maria as
17 landlords concerning some property that is identified as 1702
18 Carmen. Were you living at 1702 Carmen?

19 A No, sir.

20 Q Do you know who was living at 1702 Carmen? If you know.

21 A I think it was my sister-in-law, I think.

22 Q Did you own a home at 1702 Carmen? Do you remember?

23 A I can't remember, sir.

24 Q Do you know anything about this real estate lease?

25 A No, sir.

1 Q The only thing that you agreed back in 2002 -- January --
2 was to allow your brother-in-law, Mr. Flores, to place a mobile
3 home that he was trying to buy or trying to purchase from
4 Clayton Homes. Is that correct?

5 A Correct, sir.

6 Q Locate that mobile home on property that you and Maria
7 Trevino owned, right?

8 A Correct.

9 MR. B. GUTIERREZ: That's all we have. Pass the
10 witness.

11 THE COURT: Thank you, sir.

12 MR. RUMLEY: Your Honor, I'll reserve mine until my
13 case.

14 THE COURT: Mr. Rangel?

15 MR. RANGEL: Just a brief follow-up.

16 REDIRECT EXAMINATION

17 BY MR. RANGEL:

18 Q Mr. Trevino, Mr. Gutierrez showed you a document, I
19 believe it was the deed of trust.

20 Pull up the deed of trust and also the builder's and
21 mechanic's lien were the last pages. If you'll go to the last
22 two pages on the deed of trust. The previous page on each one.
23 Okay. Let's highlight.

24 This is page 4 of the deed of trust, then. I believe
25 Mr. Gutierrez was reading the language, "As a condition to such

1 consent, however." Then he jumped to the next page, correct?
2 "Beneficiary shall have the right to approve the credit
3 worthiness of any assignee or purchaser of any interest in the
4 property agreement." Do you see that?

5 A Yes, sir.

6 Q Okay. Now, let's look at the last two pages of the
7 builder's and mechanic's lien.

8 **MR. RANGEL:** I'm sorry, your Honor. May we confer?

9 **THE COURT:** Yes, sir.

10 **(Attorneys confer)**

11 **BY MR. RANGEL:**

12 Q Okay. Let's start over, Mr. Trevino. Go to the document
13 that Mr. Gutierrez showed you. Going to the last two pages of
14 each of those documents. Okay. Let's see that one. Last
15 line.

16 Okay. The last line on that page of the builder's
17 and mechanic's lien is, "This contract shall bind, inure to the
18 benefit of and be exercised by successors in interest of all
19 parties." Correct? That's the language that Mr. Gutierrez
20 showed you, right?

21 A Yes, sir.

22 Q And then, you went to the next page. "Beneficiary shall
23 have the right to approve the credit worthiness of any assignee
24 or purchaser of any interest in the property herein described."
25 And he showed you that, also, correct?

1 A Yes, sir.

2 Q And he's saying it doesn't make any sense, because the
3 language on the previous page, if you read the next page, it
4 doesn't follow, right?

5 A Correct.

6 Q Okay. Well, let's look at the document on the right. And
7 again, looking at the last line on the previous page and the
8 first line of the next page. "As a condition to such consent,
9 however." Then let's go to the next page, signature page.

10 And then, again, it doesn't follow. "A -- if owner
11 and maker are not the same person, the term owner shall include
12 the maker." So, the point Mr. Gutierrez was trying to make is
13 these documents don't make any sense, because the next to the
14 last page is not in sequence with the last page, right?

15 A Yes, sir.

16 Q And Mr. Trevino, are you familiar sometimes when documents
17 are put together that pages get transposed or mixed up? Have
18 you had that experience from time to time?

19 A I don't know. I don't know where all those papers --

20 Q Okay. Well, let me show you what I mean. We'll pull up
21 the re-ordered one.

22 **(Attorneys confer)**

23 Okay. And this is the same document that we just
24 talked about, the deed of trust.

25 **MR. B. GUTIERREZ:** Excuse me, your Honor. We object

1 that it's not the same document. We object. It's not the same
2 document.

3 **MR. RANGEL:** This is in evidence, your Honor. I'll
4 explain to -- let me rephrase the question.

5 **THE COURT:** Thank you.

6 **BY MR. RANGEL:**

7 Q Remember I just showed you a deed of trust and showed how
8 the last two pages were not in sequence and I showed you the
9 builder's and mechanic's lien and showed you how the last two
10 pages were not in sequence, as Mr. Gutierrez had showed you?
11 Right?

12 A Correct, sir

13 Q Right?

14 A Yes, sir.

15 Q Okay. Then let's look at the deed of trust on the left
16 doing the same thing. Read the last line and I read you this
17 line awhile ago. "As a condition to such consent, however."

18 Now, let's go to the following page. "Beneficiary
19 shall have the right to approve the credit worthiness of any
20 assignee or purchaser of any interest in the property herein
21 described." Do you see that?

22 A Yes, sir.

23 Q Now, it follows. The two pages follows are in sequence.
24 The line that started on the previous page is completed by the
25 next page, right?

1 A Right.

2 Q Now, let's look at the other document and look at number 7
3 from the previous document -- previous page. Right there at
4 the bottom paragraph. Remember how Mr. Gutierrez shows you and
5 said, "Well, here, you know, 7, "This contract shall bind,
6 inure to the benefit of and be exercised by successors in
7 interest of all parties."

8 And then, he showed you the next page, which showed
9 that it didn't follow, correct?

10 A Correct.

11 Q Okay. And let's see what the next page is. And there is
12 the document that he showed you, 8. Eight after 7. Do you see
13 that, Mr. Trevino?

14 A Yes, sir.

15 Q So, do you see what happened here? That these documents
16 when they were filed, the last pages were transposed from one
17 document to another, but they're all there in both of those
18 documents. Do you see that, Mr. Trevino?

19 **MR. RUMLEY:** Objection. Calls for speculation.

20 **BY MR. RANGEL:**

21 Q Is that what the documents show?

22 **MR. RUMLEY:** Objection, your Honor. That's not what
23 the documents show. The documents show that they re-ordered
24 them.

25 **MR. RANGEL:** No.

1 **THE COURT:** I'm sorry.

2 **MR. RUMLEY:** Objection. Speculation. They re-
3 ordered the documents. Mr. Trevino doesn't know that they re-
4 ordered the documents.

5 **MR. RANGEL:** Judge, this exhibit is in evidence.
6 Mr. Gutierrez got up here and was trying to suggest that
7 somehow this document was put together to mislead people. It's
8 clear that the last two pages were transposed and the jury will
9 have an opportunity to read this exhibit and see how that
10 happened.

11 **MR. RUMLEY:** And my objection is speculation.
12 Mr. Trevino was not there, does not know anything about the
13 filing and doesn't know that they re-numbered the documents.

14 **MR. RANGEL:** I'm just asking if that's what this
15 document, which is in evidence, shows, your Honor.

16 **THE COURT:** If you don't know, you can say you don't
17 know.

18 **THE WITNESS:** I don't know.

19 **BY MR. RANGEL:**

20 Q Would you agree that this exhibit, which is Exhibit --
21 Exhibits 209 and 210 -- will speak for themselves in terms of
22 what's in them, correct?

23 A I don't know, sir.

24 Q Okay. And the other two exhibits, Exhibits 2 and 3, again
25 which are in evidence, will speak for themselves and the jury

1 will have an opportunity to compare the documents and see for
2 themselves what's in the documents, correct?

3 A I don't know, sir.

4 Q Okay.

5 Judge, subject to being able to cross examine him
6 again when he's presented, we pass the witness, your Honor.

7 **THE COURT:** Thank you, sir. Mr. Gutierrez, you may
8 proceed.

9 **MR. B. GUTIERREZ:** Yes, just a few questions.

10 **RECROSS EXAMINATION**

11 **BY MR. B. GUTIERREZ:**

12 Q You never went to Clayton Homes; is that correct?

13 A That's correct, sir.

14 Q You never met anyone from Clayton Homes? Anyone employed
15 by Clayton Homes?

16 A No, sir.

17 Q Did anyone ever go to your house in Premont from Clayton
18 Homes?

19 A No, sir.

20 Q Did anyone take any documents, any papers for you to sign,
21 anyone from Clayton Homes?

22 A No, sir.

23 **MR. RANGEL:** Objection, your Honor. All this has
24 been asked and answered.

25 **THE COURT:** Sustained.

1 **BY MR. B. GUTIERREZ:**

2 Q Have you ever met an individual by the name of Christopher
3 Lance Kimball?

4 A No, sir.

5 Q The documents -- I don't know if you noticed this about
6 the documents that were just shown to you by Mr. Rangel. I
7 think it's 209 and 210. This is the document that Mr. Rangel
8 showed you, Exhibit Number 209. Do you see that?

9 A Yes, sir.

10 Q Okay. If we look at the Volume -- see Volume 774?

11 A Yes, sir.

12 Q This is the one that he showed you, page 629. It starts
13 at 629. Is that right?

14 A Right, sir.

15 Q What I'm going to do is for the sake of time, we're just
16 going to flip over. The next one would be 630?

17 A Correct.

18 Q 631?

19 A Yes, sir.

20 Q What's the next one?

21 A 632.

22 Q What's the next one?

23 A 641.

24 Q Okay. What's the next one?

25 A 634.

1 Q What's the next one?

2 A 636.

3 Q Let's look at Exhibit 410, the other document. It is a
4 deed of trust that Mr. Rangel showed you, Exhibit 210. We'll
5 go through the pages, also. Volume 774, page 637, right? Is
6 that correct?

7 A Yes, sir.

8 Q Can you see this?

9 A 638, 639, 640, 633, 642, 643.

10 Q Those are all the questions I have.

11 **THE COURT:** Anything further?

12 **MR. RANGEL:** May we approach, your Honor?

13 **THE COURT:** Sure.

14 **(Begin bench conference at 5:10 p.m.)**

15 **MR. RANGEL:** I know the Court has indicated it wanted
16 to finish up at 5:15. I have a few more questions for him, but
17 it might take longer than five minutes and then I'm ready to
18 call Mr. Nichols in the morning.

19 **THE COURT:** Well, why don't you give it a try and see
20 how quickly it'll go.

21 **MR. RANGEL:** Okay. Because what I'm going to do is I
22 want to go through the originals of these documents.

23 **THE COURT:** I mean, it is re, re, re. Go ahead.

24 **MR. RANGEL:** Thank you.

25 **(End bench conference at 5:11 p.m.)**

1 **THE COURT:** Would you proceed, please?

2 **MR. RANGEL:** Yes, your Honor.

3 **FURTHER REDIRECT EXAMINATION**

4 **BY MR. RANGEL:**

5 Q Put on the screen Exhibits 2 and 3.

6 Mr. Trevino, I will -- these two exhibits -- I'll
7 represent that these copies of the original documents -- and
8 again, I want to do the same, follow the sequence on the pages
9 for the builder's and mechanic's lien on the left, starting at
10 the bottom.

11 What page is that?

12 A 629.

13 Q Next page?

14 A 630.

15 Q Next page?

16 A 631.

17 Q Next page?

18 A 632.

19 Q Next page?

20 A 633.

21 Q Next page?

22 A 634.

23 Q Next page?

24 A 636.

25 Q Okay. And we'll go to the next document. Well, let's

1 stay on that one. Let's stay on that one. Let's go to page
2 634. ELMO.

3 Now, Mr. Trevino, I have on the ELMO here the
4 original document that is in evidence. Do you see page 634?

5 A Yes, sir.

6 Q Okay. And then, the copy that you just saw shows page
7 636, correct?

8 A Yes, sir.

9 Q Okay. If we lift the recording information -- the piece
10 of paper that was put there -- what page do we see there?

11 A 635.

12 Q So, they're all in sequence, right? It goes from 33 to 34
13 to 35.

14 A Yes, sir.

15 Q Let's do the same thing with the deed of trust. Go ahead
16 and put it up there on the original.

17 Okay. The original shows 637. Next page 638; next
18 page 639; next page 640; next page 641; next page 642. So, all
19 of those in the original are in sequence, correct?

20 A Yes, sir.

21 Q Every page is accounted for based on what you've seen on
22 the screen, correct?

23 A Yes, sir.

24 **MR. RANGEL:** Pass the witness subject to recalling
25 him on their case in chief, your Honor.

1 **THE COURT:** Thank you.

2 **MR. B. GUTIERREZ:** I have no further questions, your
3 Honor.

4 **THE COURT:** Then we will -- it is exactly 5:15 and
5 we'll start in the morning again at 8:30. If you all could get
6 here a little bit early. Thank you very much.

7 **THE CLERK:** All rise for the jury.

8 **THE COURT:** Would you please stand for the jury?

9 **(Jurors exit courtroom at 5:15 p.m.)**

10 You may stand down, sir.

11 **(Witness excused at 5:16 p.m.)**

12 Anything to take up outside the presence of the jury?

13 **MR. B. GUTIERREZ:** Not at this time, your Honor. I'm
14 just going to wait for Mr. Rangel (indiscernible).

15 **THE COURT:** Okay. Eight thirty tomorrow. Get here a
16 little bit early so we can --

17 **MR. RANGEL:** Eight thirty?

18 **THE COURT:** -- we're going to start with the jury at
19 8:30. If you all could get here about 8:20, like you did this
20 morning? Thank you.

21 **THE CLERK:** All rise.

22 **(Proceeding was adjourned at 5:16 p.m.)**

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

February 8, 2011

TONI HUDSON, TRANSCRIBER